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): **August 12, 2024**

SAFE AND GREEN DEVELOPMENT CORPORATION
(Exact Name of Registrant as Specified in its Charter)

Delaware	**001-41581**	**87-1375590**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

990 Biscayne Blvd
#501, Office 12
Miami, FL 33132
(Address of Principal Executive Offices, Zip Code)

Registrant's telephone number, including area code: 904-496-0027

(Former name or former address, if changed since last report.)

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, par value $0.001	**SGD**	**The Nasdaq Stock Market LLC**

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 August 12, 2024, Safe and Green Development Corporation (the "Company") entered into a Securities Purchase Agreement, dated August 12, 2024 (the "Purchase Agreement") with the purchasers named therein ("Arena Investors"), pursuant to which the Company agreed to issue, in a private placement offering (the "Offering") upon the satisfaction of certain conditions specified in the Purchase Agreement, up to five secured convertible debentures to Arena Investors in the aggregate principal amount of $10,277,777 (the "Debentures") together with warrants to purchase a number of shares of the Company's common stock equal to 20% of the total principal amount of the Debentures sold divided by 92.5% of the lowest daily VWAP (as defined in the Purchase Agreement) for the Company's common stock during the ten consecutive trading day period preceding the respective closing dates (the "Warrants").

The closing of the first tranche was consummated on August 12, 2024 (the "First Closing Date") and the Company issued to Arena Investors 10% original issue discount secured convertible debentures in principal amount of $1,388,888.75 (the "First Closing Debentures") and a warrant (the "First Closing Warrants") to purchase up to 277,777 shares of the Company's common stock. The First Closing Debentures were sold to Arena Investors for a purchase price of $1,250,000, representing an original issue discount of ten percent (10%). In connection with the closing, the Company reimbursed Arena Investors $55,000 for its legal fees and expenses and placed $250,000 in escrow, to be released to the Company upon the First Registration Statement Effectiveness Date (as defined in the Purchase Agreement).

The First Closing Debentures mature eighteen months from its date of issuance and bears interest at a rate of 0% per annum. The First Closing Debentures are convertible, at the option of the holder, at any time, into such number of shares of common stock of the Company equal to the principal amount of the First Closing Debentures plus all accrued and unpaid interest at a conversion price equal to the lesser of (i) $0.279, and (ii) 92.5% of lowest daily volume weighted average price (VWAP) of the Company's common stock during the ten trading day period ending on such conversion date (the "Conversion Price"), subject to adjustment for any stock splits, stock dividends, recapitalizations and similar events, as well as anti-dilution price protection provisions, and subject to a floor price of $0.04854.

The First Closing Debentures are redeemable by the Company at a redemption price equal to 115% of the sum of the principal amount to be redeemed plus accrued interest, if any. While the First Closing Debentures are outstanding, if the Company or any of its subsidiaries receives cash proceeds from the issuance of equity or indebtedness (other than the issuance of additional secured convertible debentures as contemplated by the Purchase Agreement), in one or more financing transactions, whether publicly offered or privately arranged (including, without limitation, pursuant to the Arena ELOC (as defined below), the Company shall, within two (2) business days of Company's receipt of such proceeds, inform the holder of such receipt, following which the holder shall have the right in its sole discretion to require the Company to immediately apply up to 20% of all proceeds received by the Company to repay the outstanding amounts owed under the First Closing Debentures.

The First Closing Debentures contains customary events of default. If an event of default occurs, until it is cured, the holder may increase the interest rate applicable to the First Closing Debentures to two percent (2%) per annum and accelerate the full indebtedness under the First Closing Debentures, in an amount equal to 150% of the outstanding principal amount and accrued and unpaid interest. Subject to limited exceptions set forth in the First Closing Debentures, the First Closing Debentures prohibit the Company and, as applicable, its subsidiaries from incurring any new indebtedness that is not subordinated to the Company's and, as applicable, any subsidiary's obligations in respect of the First Closing Debentures until the First Closing Debentures are paid in full.

The First Closing Warrants expire five years from its date of issuance. The First Closing Warrants are exercisable, at the option of the holder, at any time, for up to 1,299,242 of shares of the Company's common stock at an exercise price equal to $0.279 (the "Exercise Price"), subject to adjustment for any stock splits, stock dividends, recapitalizations, and similar events, as well as anti-dilution price protection provisions that are subject to a floor price as set forth in the First Closing Warrants. The First Closing Warrants provide for cashless exercise under certain circumstances.

The Company entered into a Registration Rights Agreement, dated August 12, 2024 (the "RRA"), with Arena Investors where it agreed to file with the Securities and Exchange Commission (the "SEC") an initial registration statement within 30 days to register the maximum number of Registrable Securities (as defined in the RRA) issuable under the First Closing Debentures and the First Closing Warrants as shall be permitted to be included thereon in accordance with applicable SEC rules and to use its reasonable best efforts to have the registration statement declared effective by the SEC no later than the "First Registration Statement Effectiveness Date", which is defined as the 30th calendar day following the First Closing Date (or, in the event of a "full review" by the SEC, no later than the 120th calendar day following the First Closing Date); provided, however, that if the registration statement will not be reviewed or is no longer subject to further review and comments, the First Registration Statement Effectiveness Date will be the fifth trading day following the date on which the Company is so notified if such date precedes the date otherwise required above.

Under the Purchase Agreement, a closing of the second tranche may occur subject to the mutual written agreement of Arena Investors and the Company and satisfaction of the closing conditions set forth in the Purchase Agreement on the later (y) the fifth trading day following the First Registration Statement Effectiveness Date (or if such day is not a trading day, on the next succeeding trading day) and (z) such date as the outstanding principal balance of the First Closing Debenture issued is less than $100,000.00, unless the parties mutually agree in writing to consummate the second closing on a different date, upon which the Company would issue and sell to Arena Investors on the same terms and conditions a second 10% original issue discount secured convertible debentures in principal amount of $2,222,222 (the "Second Closing Debentures") and a warrant (the "Second Closing Warrants") to purchase a number of shares of the Company's common stock equal to 20% of the total principal amount of the Second Closing Debentures divided by 92.5% of the lowest daily VWAP (as defined in the Purchase Agreement) for the common stock during the ten consecutive trading day period ended on the last trading day immediately preceding the closing of the second tranche, provided the second Closing is also contingent on the satisfaction of the following additional condition, unless waived mutually by the parties: the median daily turnover of the Company's common stock on its principal trading market for the thirty consecutive trading day period ended as of the last trading day immediately preceding the date of the proposed second Closing must be greater than $200,000.

The Second Closing Debentures would be sold to Arena Investors for a purchase price of $2,000,000, representing an original issue discount of ten percent (10%). In connection with the closing of the second tranche, the Company will enter into a registration rights agreement pursuant to which the Company will agree to register the maximum number of shares of the Company's common stock issuable under the Second Closing Debentures and the Second Closing Warrants as shall be permitted with terms substantially similar as the terms provided in the RRA. The Company also has agreed to reimburse Arena Investors for its legal fees and expenses related to such second closing.

Under the Purchase Agreement, a closing of the third tranche may occur subject to the mutual written agreement of Arena Investors and the Company and satisfaction of the closing conditions set forth in the Purchase Agreement on the later (y) the fifth trading day following the Second Registration Statement Effectiveness Date (as defined in the Purchase Agreement) (or if such day is not a trading day, on the next succeeding trading day) and (z) such date as the aggregate outstanding principal balance of the First Closing Debentures and Second Closing Debentures issued is less than $100,000.00, unless the parties mutually agree in writing to consummate the third closing on a different date, upon which the Company would issue and sell to Arena Investors on the same terms and conditions a third 10% original issue discount secured convertible debenture in principal amount of $2,222,222 (the "Third Closing Debentures") and a warrant (the "Third Closing Warrants") to purchase a number of shares of the Company's common stock equal to 20% of the total principal amount of the Third Closing Debentures divided by 92.5% of the lowest daily VWAP (as defined in the Purchase Agreement) for the common stock during the ten consecutive trading day period ended on the last trading day immediately preceding the closing of the third tranche, provided the third Closing is also contingent on the satisfaction of the following additional condition, unless waived mutually by the parties: the median daily turnover of the Company's common stock on its principal trading market for the thirty consecutive trading day period ended as of the last trading day immediately preceding the date of the proposed third Closing must be greater than $200,000.

The Third Closing Debentures would be sold to Arena Investors for a purchase price of $2,000,000, representing an original issue discount of ten percent (10%). In connection with the closing of the third tranche, the Company will enter into a registration rights agreement pursuant to which the Company will agree to register the maximum number of shares of the Company's common stock issuable under the Third Closing Debentures and the Third Closing Warrants as shall be permitted with terms substantially similar as the terms provided in the RRA. The Company also has agreed to reimburse Arena Investors for its legal fees and expenses related to such third closing.

Under the Purchase Agreement, a closing of the fourth tranche may occur subject to the mutual written agreement of Arena Investors and the Company and satisfaction of the closing conditions set forth in the Purchase Agreement on the later (y) the fifth trading day following the Third Registration Statement Effectiveness Date (as defined in the Purchase Agreement) (or if such day is not a trading day, on the next succeeding trading day) and (z) such date as the aggregate outstanding principal balance of the First Closing Debentures, Second Closing Debentures and Third Closing Debentures issued is less than $100,000.00, unless the parties mutually agree in writing to consummate the fourth closing on a different date, upon which the Company would issue and sell to Arena Investors on the same terms and conditions a fourth 10% original issue discount secured convertible debenture in principal amount of $2,222,222 (the "Fourth Closing Debentures") and a warrant (the "Fourth Closing Warrants") to purchase a number of shares of the Company's common stock equal to 20% of the total principal amount of the Fourth Closing Debentures divided by 92.5% of the lowest daily VWAP (as defined in the Purchase Agreement) for the common stock during the ten consecutive trading day period ended on the last trading day immediately preceding the closing of the fourth tranche, provided the fourth Closing is also contingent on the satisfaction of the following additional condition, unless waived mutually by the parties: the median daily turnover of the Company's common stock on its principal trading market for the thirty consecutive trading day period ended as of the last trading day immediately preceding the date of the proposed fourth Closing must be greater than $200,000.

The Fourth Closing Debentures would be sold to Arena Investors for a purchase price of $2,000,000, representing an original issue discount of ten percent (10%). In connection with the closing of the fourth tranche, the Company will enter into a registration rights agreement pursuant to which the Company will agree to register the maximum number of shares of the Company's common stock issuable under the Fourth Closing Debentures and the Fourth Closing Warrants as shall be permitted with terms substantially similar as the terms provided in the RRA. The Company also has agreed to reimburse Arena Investors for its legal fees and expenses related to such fourth closing.

Under the Purchase Agreement, a closing of the fifth tranche may occur subject to the mutual written agreement of Arena Investors and the Company and satisfaction of the closing conditions set forth in the Purchase Agreement on the later (y) the fifth trading day following the Fourth Registration Statement Effectiveness Date(as defined in the Purchase Agreement) (or if such day is not a trading day, on the next succeeding trading day) and (z) such date as the outstanding principal balance of the First Closing Debentures, Second Closing Debentures, Third Closing Debentures and Fourth Closing Debentures issued is less than $100,000.00, unless the parties mutually agree in writing to consummate the fifth closing on a different date, upon which the Company would issue and sell to Arena Investors on the same terms and conditions a fifth 10% original issue discount secured convertible debenture in principal amount of $2,222,222 (the "Fifth Closing Debentures") and a warrant (the "Fifth Closing Warrants") to purchase a number of shares of the Company's common stock equal to 20% of the total principal amount of the Fifth Closing Debentures divided by 92.5% of the lowest daily VWAP (as defined in the Purchase Agreement) for the common stock during the ten consecutive trading day period ended on the last trading day immediately preceding the closing of the fifth tranche, provided the fifth Closing is also contingent on the satisfaction of the following additional condition, unless waived mutually by the parties: the median daily turnover of the Company's common stock on its principal trading market for the thirty consecutive trading day period ended as of the last trading day immediately preceding the date of the proposed fifth Closing must be greater than $200,000.

The Fifth Closing Debentures would be sold to Arena Investors for a purchase price of $2,000,000, representing an original issue discount of ten percent (10%). In connection with the closing of the fifth tranche, the Company will enter into a registration rights agreement pursuant to which the Company will agree to register the maximum number of shares of the Company's common stock issuable under the Fifth Closing Debentures and the Fifth Closing Warrants as shall be permitted with terms substantially similar as the terms provided in the RRA. The Company also has agreed to reimburse Arena Investors for its legal fees and expenses related to such fifth closing.

Without giving effect to the Exchange Cap discussed below, assuming the Company issued all of the Debentures and converted accrued interest in full on each of the Debentures into its common stock at the floor price (assuming each of such Debentures accrued interest for a period one year), approximately 3,559,961 shares of the Company's common stock would be issuable upon conversion.

The Purchase Agreement prohibits the Company from entering into a Variable Rate Transaction (other than the Arena ELOC described below) until such time as no Debentures remain outstanding. In addition, the Purchase Agreement provides that from the (i) the First Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debentures remain outstanding and (y) 120 days after the First Registration Statement Effectiveness Date, (ii) the Second Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debentures remain outstanding and (y) 120 days after the Second Registration Statement Effectiveness Date, (iii) the Third Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debentures remain outstanding and (y) 120 days after the Third Registration Statement Effectiveness Date, (iv) the Fourth Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debentures remain outstanding and (y) 120 days after the Fourth Registration Statement Effectiveness Date, and (v) the Fifth Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debentures remain outstanding and (y) 120 days after the Fifth Registration Statement Effectiveness Date, neither the Company nor any subsidiary may issue any Common Stock or Common Stock equivalents, except for certain exempted issuances (i.e., stock options, employee grants, shares issuable pursuant to outstanding securities, acquisitions and strategic transactions) and the Arena ELOC.

The Company entered into a Security Agreement, dated August 12, 2024 (the "Security Agreement"), with Arena Investors where it agreed to grant Arena Investors a security interest in all of its assets to secure the prompt payment, performance and discharge in full of all of the Company's obligations under the Debentures. In addition, each of the Company's subsidiaries entered into a Guaranty Agreement, dated August 12, 2024 (the "Subsidiary Guaranty"), with Arena Investors pursuant to which they agreed to guarantee the prompt payment, performance and discharge in full of all of the Company's obligations under the Debentures.

Maxim Group LLC ("Maxim") acted as placement agent in the Offering. In connection with the closing of the first tranche of the Offering, the Company paid a placement fee of $60,000 and an expense reimbursement of $15,000 to Maxim. Assuming the second tranche is closed, a placement fee in an amount equal to $120,000 will be payable by the Company to Maxim upon closing of the second tranche of the Offering. Assuming the third tranche is closed, a placement fee in an amount equal to $120,000 will be payable by the Company to Maxim upon closing of the third tranche of the Offering. Assuming the fourth tranche is closed, a placement fee in an amount equal to $120,000 will be payable by the Company to Maxim upon closing of the fourth tranche of the Offering. Assuming the fifth tranche is closed, a placement fee in an amount equal to $120,000 will be payable by the Company to Maxim upon closing of the fifth tranche of the Offering.

The Purchase Agreement and the Registration Rights Agreement contain customary representations, warranties, agreements and conditions to completing future sale transactions, indemnification rights and obligations of the parties. Among other things, Arena Investors represented to the Company, that it is an "accredited investor" (as such term is defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the "Securities Act")), and the Company sold the securities in reliance upon an exemption from registration contained in Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

On August 12, 2024 , the Company also entered into an Purchase Agreement (the "Arena ELOC") with Arena Business Solutions Global SPC II, LTD ("Arena Global"), pursuant to which the Company shall have the right, but not the obligation, to direct Arena Global to purchase up to $50,000,000.00 (the "Maximum Commitment Amount") in shares of the Company's common stock in multiple tranches upon satisfaction of certain terms and conditions contained in the Arena ELOC, which includes, but is not limited to, filing a registration statement with the SEC and registering the resale of any shares sold to Arena Global. Further, under the Arena ELOC and subject to the Maximum Commitment Amount, the Company has the right, but not the obligation, to submit an Advance Notice (as defined in the Arena ELOC) from time to time to Arena Global calculated as follows: (a) if the Advance Notice is received by 8:30 a.m. Eastern Time. the lower of: (i) an amount equal to seventy percent (70%) of the average of the Daily Value Traded (as defined in the Arena ELOC) of the Company's common stock on the ten trading days immediately preceding an Advance Notice, or (ii) $20 million, (b) if the Advance Notice is received after 8:30 a.m. Eastern Time but prior to 10:30 a.m. Eastern Time, the lower of (i) an amount equal to forty percent (40%) of the average of the Daily Value Traded of the Company's common stock on the ten trading days immediately preceding an Advance Notice, or (ii) $15 million, and (c) if the Advance Notice is received after 10:30 a.m. Eastern Time but prior to 12:30 p.m. Eastern Time, the lower of (i) an amount equal to twenty percent (20%) of the average of the Daily Value Traded of the Company's common stock on the ten trading days immediately preceding an Advance Notice, or (ii) $10 million.

During the Commitment Period (as defined below), the purchase price to be paid by Arena Investors for the common stock under the EP Agreement will be 96% of the Market Price, defined as the daily volume weighted average price (VWAP) of the Company's common stock, on the trading day commencing on the date of the Advance Notice.

In connection with the Arena ELOC, the Company agreed, among other things, to issue to Arena Global, in two separate tranches, as a commitment fee, that number of shares of its restricted common stock ("Commitment Fee Shares") equal to (i) with respect to the first tranche ("First Tranche"), 500,000 divided by the simple average of the daily VWAP of the common stock during the five trading days immediately preceding the effectiveness of the initial registration statement (the "Initial Registration Statement") on which the Commitment Fee Shares are registered (the "First Tranche Price"), promptly the effectiveness of the Registration Statement (the "Initial Issuance") and (ii) with respect to the second tranche ("Second Tranche"), 250,000 divided by the simple average of the daily VWAP of the Common Shares during the five trading days immediately preceding the three month anniversary (the "Anniversary") of the effectiveness of the registration statement on which the Commitment Fee Shares are registered (the "Second Tranche Price"), promptly after the Anniversary.

The Commitment Fee Shares shall be subject to a true-up after each issuance pursuant to which the Company shall issue to Arena Global common stock having an aggregate dollar value equal to (i) with respect to the First Tranche, 500,000 based on the lower of (A) the First Tranche Price and (B) the lower of (a) the simple average of the three lowest daily intraday trade prices over the twenty trading days after (and not including) the date of effectiveness of the Initial Registration Statement and (b) the closing price on the twentieth trading day after the effectiveness of the Registration Statement, and (ii) with respect to the Second Tranche, 250,000 based on the lower of (A) the Second Tranche Price and (B) the lower of (a) the simple average of the three lowest daily intraday trade prices over the twenty trading days after (and not including) the Anniversary and (b) the closing price on the twentieth trading day after the Anniversary.

In connection with the Arena ELOC, the Company agreed to file a registration statement registering the common stock issued or issuable to Arena Global under the Arena ELOC for resale with the SEC within 30 calendar days of the Arena ELOC.

The obligation of Arena Global to purchase the Company's common stock under the Arena ELOC begins on the date of the Arena ELOC, and ends on the earlier of (i) the date on which Arena Global shall have purchased common stock pursuant to the Arena ELOC equal to the Commitment Amount, (ii) thirty six (36) months after the date of the Arena ELOC or (iii) written notice of termination by the Company (the "Commitment Period"). The Arena ELOC contains customary representations, warranties, agreements and conditions to completing future sale transactions, indemnification rights and obligations of the parties. Among other things, Arena Global represented to the Company, that it is an "accredited investor" (as such term is defined in Rule 501(a) of Regulation D under the Securities Act, and the Company will sell the securities in reliance upon an exemption from registration contained in Section 4(a)(2) of the Securities Act and Regulation D promulgated thereunder.

The number of shares of the Company's common stock that may be issued upon conversion of the Debentures and exercise of the Warrants, and inclusive of the Commitment Shares and any shares issuable under and in respect of the Arena ELOC, is subject to an exchange cap (the "Exchange Cap") of 19.99% of the outstanding number of shares of the Corporation's common stock on the closing date, 3,559,961.73 shares, unless shareholder approval to exceed the Exchange Cap is approved.

The foregoing descriptions of the Purchase Agreement, the Debentures, the Warrants, the Registration Rights Agreement, the Security Agreement, the Subsidiary Guaranty and Arena ELOC are qualified in their entirety by reference to the full text of such agreements, copies of which are attached hereto as Exhibit 10.1, 4.1, 4.2, 10.2, 10.3, 10.4 and 10.5, respectively, and each of which is incorporated herein in its entirety by reference. The representations, warranties and covenants contained in such agreements were made only for purposes of such agreements and as of specific dates, were solely for the benefit of the parties to such agreements and may be subject to limitations agreed upon by the contracting parties.

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

The information set forth under Item 1.01 above of this Current Report on Form 8-K is incorporated by reference in this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 above of this Current Report on Form 8-K is incorporated by reference in this Item 3.02. The shares of the Company's common stock issued, and the shares to be issued, under the Purchase Agreement, the Second Debenture and the Second Warrant were, and will be, sold pursuant to an exemption from the registration requirements under Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D promulgated thereunder. The shares of common stock have not been registered under the Securities Act and may not be offered or sold in the United States in the absence of an effective registration statement or exemption from the registration requirements.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	**Exhibit Description**
4.1	Form of Debenture, dated August 12, 2024
4.2	Form of Warrant, dated August 12, 2024
10.1*	Securities Purchase Agreement, dated August 12, 2024
10.2	Registration Rights Agreement, dated August 12, 2024
10.3	Security Agreement, dated August 12, 2024
10.4	Guaranty, dated August 12, 2024
10.5	Purchase Agreement, dated August 12, 2024
104	Cover Page Interactive Data File (the cover page XBRL tags are embedded within the inline XBRL document)

* Exhibits and Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted exhibit and schedule to the SEC upon request

SIGNATURES

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

Dated: August 14, 2024

Safe and Green Development Corporation

By: /s/ Nicolai Brune
Name: Nicolai Brune
Title: Chief Financial Officer

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE 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. THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES

Original Issue Date: [_]
Original Principal Amount: $[_]

10% ORIGINAL ISSUE DISCOUNT
SECURED CONVERTIBLE DEBENTURE
DUE February 12, 2026

THIS 10% ORIGINAL ISSUE DISCOUNT SECURED CONVERTIBLE DEBENTURE is one of a series of duly authorized and validly issued 10% Original Issue Discount Secured Convertible Debentures of **SAFE AND GREEN DEVELOPMENT CORPORATION**, a Delaware corporation (together with its successors and assigns, the "Company"), whose registered office is at 100 Biscayne Blvd., #1201, Office 12, Miami, FL 33132, designated as its 10% Original Issue Discount Secured Convertible Debenture due February 9, 2026 (this debenture, the "Debenture" and, collectively with the other debentures of such series, the "Debentures").

FOR VALUE RECEIVED, the Company promises to pay to [_] or its registered assigns (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of $[_] on [_] (the "Maturity Date") or such earlier date as this Debenture is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Debenture in accordance with the provisions hereof. All payments due hereunder (to the extent not converted into shares Common Stock in accordance with the terms hereof) shall be made in lawful money of the United States of America at the address or otherwise pursuant to such instructions as the Holder shall provide to the Company by written notice made in accordance with the provisions of this Debenture. This Debenture is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Debenture, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

"Alternate Consideration" shall have the meaning set forth in Section 5(e).

"Bankruptcy Event" means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, (g) the Company or any Significant Subsidiary thereof admits in writing that it is generally unable to pay its debts as they become due, (h) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Base Conversion Price" shall have the meaning set forth in Section 5(b).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 4(d).

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally are open for use by customers on such day.

"Buy-In" shall have the meaning set forth in Section 4(c)(v).

"Change of Control Transaction" means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital shares of the Company, by contract or otherwise) of in excess of 50% of the voting securities of the Company (other than by means of conversion or exercise of the Debentures and the Warrants issued together with the Debentures), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the shareholders of the Company immediately prior to such transaction own less than 50% of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company (and all of its Subsidiaries, taken as a whole) sells or transfers all or substantially all of its assets to another Person and the shareholders of the Company immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a three year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Execution Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Conversion Date" shall have the meaning set forth in Section 4(a).

"Conversion Price" shall have the meaning set forth in Section 4(b).

"Conversion Shares" means, collectively, the shares Common Stock issuable upon conversion of this Debenture in accordance with the terms hereof.

"Debenture Register" shall have the meaning set forth in Section 2.

"Dilutive Issuance" shall have the meaning set forth in Section 5(b).

"Dilutive Issuance Notice" shall have the meaning set forth in Section 5(b).

"Dollars" and "$" mean dollars in lawful currency of the United States of America.

"Effectiveness Period" shall have the meaning set forth in the Registration Rights Agreement.

"Event of Default" shall have the meaning set forth in Section 8(a).

"Execution Date" means [_].

"Floor Price" shall have the meaning set forth in Section 4(b).

"Floor Price Spread Amount" shall have the meaning set forth in Section 4(c)(i).

"Fundamental Transaction" shall have the meaning set forth in Section 5(e).

"Indebtedness" or "indebtedness" of any person shall mean, if and to the extent (other than with respect to clause (i)) the same would constitute indebtedness or a liability on a balance sheet prepared in accordance with GAAP, without duplication, (a) all obligations of such person for borrowed money, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (d) all obligations of such person issued or assumed as the deferred purchase price of property or services (other than such obligations accrued in the ordinary course of business or consistent with past practice or industry norm), to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all capitalized lease obligations of such person, (f) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of letters of credit, (g) the principal component of all obligations of such person in respect of bankers' acceptances, and (h) all guarantees by such person of indebtedness described in clauses (a) to (g) above; provided, that Indebtedness shall not include (A) trade and other ordinary-course payables and intercompany liabilities arising in the ordinary course of business or consistent with past practice or industry norm, (B) accrued expenses, (C) prepaid or deferred revenue, (D) purchase price holdbacks arising in the ordinary course of business or consistent with past practice or industry norm in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset, or (E) earn-out obligations until such obligations become a liability on the balance sheet of such person in accordance with GAAP.

"Mandatory Default Amount" means the sum of (a) 150% of the outstanding principal amount of this Debenture, plus 100% of accrued and unpaid interest hereon, and (b) all other amounts, costs, expenses and liquidated damages due in respect of this Debenture.

"New York Courts" shall have the meaning set forth in Section 9(f).

"Notice of Conversion" shall have the meaning set forth in Section 4(a).

"Optional Redemption" shall have the meaning set forth in Section 6(b).

"Optional Redemption Amount" shall have the meaning set forth in Section 6(b).

"Optional Redemption Date" shall have the meaning set forth in Section 6(b).

"Optional Redemption Notice" shall have the meaning set forth in Section 6(b).

"Optional Redemption Notice Date" shall have the meaning set forth in Section 6(b).

"Common Stock" means the common stock of the Company, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

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

"Original Issue Date" means the date of the first issuance of the Debenture (i.e., the date first written above), regardless of any transfers of the Debenture and regardless of the number of instruments which may be issued to evidence such Debenture.

"Permitted Indebtedness" means (a) the indebtedness evidenced by the Debentures, (b) the indebtedness existing on the Execution Date set forth on Schedule 20 to the Perfection Certificate; (c) indebtedness that has been subordinated to the Company's and, as applicable, any Subsidiary's obligations in respect of the Debentures and the other Transaction Documents pursuant to the terms of a subordination agreement, acceptable to the Holder in its sole discretion, to which the creditor in respect of such indebtedness is a party; (d) indebtedness between the Company and any subsidiary; (e) indebtedness evidenced by surety bonds and performance bonds for performance of commercial arrangements not to exceed an aggregate amount of $500,000; (f) purchase money indebtedness to finance the purchase of fixed or capital assets, including all capital lease obligations of the Company, which does not exceed the purchase price of the assets funded, and (g) indebtedness evidenced by a mortgage on real property which does not exceed the appraised value of the respective real property.

"Permitted Lien" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet delinquent by more than 30 days or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the business Company or any Subsidiary business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the business of the Company or any Subsidiary business which secure obligations which are not more than 30 days overdue, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a), (b), and (d) thereunder, and (d) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased (e) Liens in existence on the date of this Agreement and which have been set forth on Schedule 4.1(o) hereto; (f) Liens of goods securing trade letters of credit not to exceed $500,000; (g) Liens existing on any real or personal property prior to the time of acquisition or placed on property being acquired by Company or a Subsidiary to secure a portion of the purchase price ; (h) Liens renewing, extending Liens permitted; and (i) Liens in respect of property or assets securing obligations of a Subsidiary to the Company, with the prior written approval of the Holder.

"Purchase Agreement" means the Securities Purchase Agreement, dated as of [_], by and among the Company, and those certain Purchasers (as defined therein) in its capacity as Purchaser (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms).

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the Execution Date, among the Company and the original Purchaser of the Securities issued by the Company pursuant to the Purchase Agreement.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by the Holder as provided for in the Registration Rights Agreement.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Delivery Date" shall have the meaning set forth in Section 4(c)(ii).

"Standard Settlement Period" shall have the meaning set forth in Section 4(c)(ii).

"Successor Entity" shall have the meaning set forth in Section 5(e).

"Surviving Entity" shall have the meaning set forth in Section 10.

"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 or the New York Stock Exchange (or any successors to any of the foregoing).

"VWAP" shall have the meaning set forth in Section 4(b).

Section 2. Interest. Interest shall accrue on the outstanding principal amount of this Debenture from and including the Original Issue Date at the rate of zero percent (0%) per annum, or upon the occurrence and during the continuance of an Event of Default, two percent (2.00%) ("Default Interest"). Accrued and unpaid Default Interest shall be due and payable monthly in arrears in cash on the first day of each month following the occurrence of any Event of Default, for Default Interest accrued through the last day of the prior month. Such interest shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Original Issue Date until payment in full of the outstanding principal, together with all accrued and unpaid interest, liquidated damages and other amounts which may become due hereunder, has been made. Interest shall cease to accrue with respect to any portion of the principal amount of this Debenture that is converted to Conversion Shares, provided that the Company delivers the Conversion Shares and pays the applicable Floor Price Spread Amount with respect to such conversion, if any, within the time period required by Section 4 hereof. Accrued and unpaid interest hereunder will be paid to the Person in whose name this Debenture is registered on the records of the Company regarding registration and transfers of this Debenture (the "Debenture Register"); provided, notwithstanding anything to the contrary set forth herein, the Company represents and warrants that as of the Original Issue Date, the Person in whose name this Debenture is duly registered on the Debenture Register as the owner of this Debenture for the purpose of receiving payment as herein provided and for all other purposes is [_].

Section 3. Registration of Transfers and Exchanges.

(a) Different Denominations. This Debenture is exchangeable for an equal aggregate principal amount of Debentures of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

(b) Investment Representations. This Debenture has been issued subject to certain investment representations of the original Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the Purchase Agreement and applicable federal and state securities laws and regulations.

(c) Reliance on Debenture Register. Prior to due presentment for transfer to the Company of this Debenture, the Company and any agent of the Company may treat the Person in whose name this Debenture is duly registered on the Debenture Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Debenture is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

Section 4. Conversion.

(a) Voluntary Conversion. At any time after the Original Issue Date until this Debenture is no longer outstanding, this Debenture shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, at any time and from time to time (subject to the conversion limitations set forth in Section 4(d) hereof). The Holder shall effect conversions by delivering to the Company a Notice of Conversion, the form of which is attached hereto as Annex A (each, a "Notice of Conversion"), specifying therein the principal amount of this Debenture to be converted and the date on which such conversion shall be effected (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. 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. To effect conversions hereunder, the Holder shall not be required to physically surrender this Debenture to the Company unless the entire principal amount of this Debenture, plus all accrued and unpaid interest thereon, has been so converted in which case the Holder shall surrender this Debenture as promptly as is reasonably practicable after such conversion without delaying the Company's obligation to deliver the shares on the Share Delivery Date. Any conversion hereunder shall have the effect of lowering the outstanding principal amount of this Debenture in an amount equal to the applicable principal amount being converted provided that the Company delivers the Conversion Shares and pays the applicable Floor Price Spread Amount with respect to such conversion, if any, in accordance with this Section 4. The Holder and the Company shall maintain records showing the principal amount(s) converted and the date of such conversion(s). The Company may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. **The Holder, and any assignee by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Debenture, the unpaid and unconverted principal amount of this Debenture may be less than the amount stated on the face hereof.**

(b) Conversion Price; Floor Price. The conversion price of the Debenture in effect as of any Conversion Date shall be a price per share of Common Stock equal to the lesser of (i) $0.259, and (ii) 92.5% of lowest daily VWAP of the Common Stock during the ten (10) consecutive Trading Day period ending on such Conversion Date (the "Conversion Price"), subject to the Floor Price as set forth below and subject to adjustment as provided herein; notwithstanding the foregoing, the Conversion Price may not be lower than the Floor Price.

As used herein, the term "Floor Price" means $0.045; provided, notwithstanding anything to the contrary set forth herein, the Floor Price may be reduced at any time from the Floor Price then in effect upon the written consent of the Company and the Holder.

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

(c) Mechanics of Conversion; Floor Price Spread Payments.

(i) Conversion Shares Issuable Upon Conversion of Principal Amount; Floor Price Spread Payments. The number of Conversion Shares issuable upon a conversion as of any Conversion Date hereunder shall be equal to the quotient obtained by dividing the outstanding principal amount of this Debenture to be converted by the Conversion Price as of such Conversion Date; provided, notwithstanding anything to the contrary set forth herein, that if the Floor Price exceeds the Conversion Price on any Conversion Date, then (1) the number of Conversion Shares issuable upon the applicable conversion hereunder shall be equal to the quotient obtained by dividing the outstanding principal amount of this Debenture to be converted by the Floor Price as of such Conversion Date, and (2) the Company shall pay the Holder an amount in cash on the applicable Share Delivery Date with respect to such conversion (a "Floor Price Spread Amount") equal to the product obtained by multiplying (A) the amount obtained by subtracting the Conversion Price as of such Conversion Date from the Floor Price as of such Conversion Date by (B) the amount obtained by subtracting (x) the quotient obtained by dividing the outstanding principal amount of this Debenture to be converted by the Conversion Price as of such Conversion Date from (y) the quotient obtained by dividing the outstanding principal amount of this Debenture to be converted by the Floor Price as of such Conversion Date.

(ii) Delivery of Conversion Shares Upon Conversion; Floor Price Spread Payments. Not later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the "Share Delivery Date"), the Company shall deliver, or cause to be delivered, to the Holder (A) the Conversion Shares which, on or after the earlier of (i) the six-month anniversary of the Original Issue Date or (ii) the Applicable Effective Date, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of Conversion Shares being acquired upon the applicable conversion of this Debenture). On or after the earlier of (i) the six-month anniversary of the Original Issue Date or (ii) the Applicable Effective Date, the Company shall deliver any Conversion Shares required to be delivered by the Company under this Section 4(c) electronically through the Depository Trust Company or another established clearing corporation performing similar functions. Any Floor Price Spread Amount payable with respect to a conversion of the Debenture as determined in accordance with Section 4(c)(i) above shall be due and payable by the Company in full on the Share Delivery Date for such conversion. As used herein, the term "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of any Notice of Conversion.

(iii) Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares 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 Company at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Debenture delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

(iv) Obligation Absolute; Partial Liquidated Damages. The Company's obligations to issue and deliver the Conversion Shares upon conversion of this Debenture in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the 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 the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action the Company may have against the Holder. In the event the Holder of this Debenture shall elect to convert any or all of the outstanding principal amount hereof, the Company may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the 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 this Debenture shall have been sought and obtained, and the Company posts a surety bond for the benefit of the Holder in the amount of 150% of the outstanding principal amount of this Debenture, 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 the Holder to the extent it obtains judgment. In the absence of such injunction, the Company shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If the Company fails for any reason to deliver to the Holder such Conversion Shares pursuant to Section 4(c)(ii) by the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of principal amount being converted, $7.50 per Trading Day (increasing to $15.00 per Trading Day on the fifth (5th) Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for the Company's failure to deliver Conversion Shares within the period specified herein and the 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 the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(v) Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to the Holder such Conversion Shares by the Share Delivery Date pursuant to Section 4(c)(ii), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Company shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) this Debenture in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 4(c)(ii). For example, if the Holder purchases a number of shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of this Debenture with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon conversion of this Debenture as required pursuant to the terms hereof.

(vi) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued Common Stock for the sole purpose of issuance upon conversion of this Debenture and payment of interest on this Debenture, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and any other holders of the Debentures), not less than such aggregate number of shares of Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding principal amount of this Debenture and payment of interest hereunder. The Company covenants that all Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if the Registration Statement is then effective under the Securities Act, shall be registered for public resale in accordance with such Registration Statement (subject to such Holder's compliance with its obligations under the Registration Rights Agreement).

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

(viii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Debenture shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holder of this Debenture so converted and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

(d) Holder's Conversion Limitations. The Company shall not effect any conversion of this Debenture, and a Holder shall not have the right to convert any portion of this Debenture, to the extent that after giving effect to the conversion set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of this Debenture with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, unconverted principal amount of this Debenture beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, any other Debentures or the Warrants) beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 4(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 4(d) applies, the determination of whether this Debenture is convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which principal amount of this Debenture is convertible shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Debenture may be converted (in relation to other securities owned by the Holder together with any Affiliates or Attribution Parties) and which principal amount of this Debenture is convertible, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4(d), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company, or (C) a more recent written notice by the Company or the Company's Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Debenture, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of Common Stock issuable upon conversion of this Debenture. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 4(d), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of Common Stock upon conversion of this Debenture held by the Holder and the Beneficial Ownership Limitation provisions of this Section 4(d) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The Beneficial Ownership Limitation provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Debenture. Notwithstanding anything to the contrary contained in this Debenture or the other Transaction Documents, while the Company is listed on the Trading Market and prior to the receipt of the Shareholder Approval, the Holder and the Company agree that nothing in the Transaction Documents shall require the Company to issue any Common Stock to Lender to the extent such issuance would result in the aggregate number of Underlying Shares issued by the Company pursuant to the Transaction Documents to exceed the Conversion Cap.

Section 5. Certain Adjustments.

(a) Share Dividends and Share Splits. If the Company, at any time while this Debenture is outstanding: (i) pays a share dividend or otherwise makes a distribution or distributions payable in Common Stock on Common Stock or any Common Stock Equivalents (which, for avoidance of doubt, shall not include any Common Stock issued by the Company upon conversion of, or payment of interest on, the Debentures), (ii) subdivides outstanding Common Stock into a larger number of shares, (iii) combines (including by way of a reverse share split) outstanding Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of Common Stock or any capital shares of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Equity Sales. If, at any time while this Debenture is outstanding, the Company or any Subsidiary, as applicable, sells or grants any option to purchase, or otherwise issues, any Common Stock or Common Stock Equivalents entitling any Person to acquire 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"), then simultaneously with the consummation of each Dilutive Issuance, the Conversion Price shall be reduced to equal the Base Conversion Price (subject to adjustment for reverse and forward share splits, recapitalizations and similar transactions following the date of the Purchase Agreement); provided, for the avoidance of doubt, the effect of any adjustment to the Conversion Price pursuant to this Section 5(b) shall be to reduce and not increase the Conversion Price. Notwithstanding the foregoing, no adjustment will be made under this Section 5(b) in respect of an Exempt Issuance. If the Company enters into a Variable Rate Transaction, despite the prohibition set forth in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company 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 5(b), 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 Company provides a Dilutive Issuance Notice pursuant to this Section 5(b), 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.

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 5(a) above, if at any time while this Debentures is outstanding the Company grants, issues or sells any Common Stock Equivalents or rights to purchase shares, warrants, securities or other property pro rata to all of the record holders of all of the shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Pro Rata Distributions. During such time as this Debenture is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all of the holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, shares or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) Fundamental Transaction. If, at any time while this Debenture is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person and the Company is not the surviving entity (other than a reincorporation in a different state or a similar transaction pursuant to which the surviving company remains a public company), (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock (excluding a stock split) or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement (excluding a stock split)) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding Common Stock (not including any Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Debenture, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Debenture is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Debenture following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under the Debentures and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 5(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Debenture, deliver to the Holder in exchange for this Debenture a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Debenture which is convertible for a corresponding number of capital shares of such Successor Entity (or its parent entity) equivalent to the Common Stock acquirable and receivable upon conversion of this Debenture (without regard to any limitations on the conversion of this Debenture) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such capital shares (but taking into account the relative value of the Common Stock pursuant to such Fundamental Transaction and the value of such capital shares, such number of capital shares and such conversion price being for the purpose of protecting the economic value of this Debenture immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under the Debentures and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(f) Calculations. All calculations under this Section 5 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 5, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

(g) Notice to the Holder.

(i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5, the Company shall promptly deliver to the Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(ii) .

Section 6. Mandatory Prepayment; Redemption.

(a) Mandatory Prepayment. If, at any time prior to the full repayment or full conversion of all amounts owed under this Debenture, the Company or any of its Subsidiaries receives cash proceeds from the issuance of equity or indebtedness (other than the issuance of other Debentures), in one or more financing transactions, whether publicly offered or privately arranged (including, without limitation, pursuant to the Arena ELOC), the Company shall, within one (1) Business Day of the Company or the applicable Subsidiary's receipt of such proceeds, inform the Holder of such receipt via written notice (a "Mandatory Prepayment Notice"), whereupon the Holder shall have the right in its sole discretion to require, by written notice to the Company delivered within five (5) Business Days of the Holder's receipt of any such Mandatory Prepayment Notice, that the Company immediately apply, subject to the 20% limit below, up to thirty percent (30%) of the gross cash proceeds received from the applicable financing transaction to prepay the Company's then outstanding obligations under the Debentures (a "Mandatory Prepayment Exercise Notice"). The Company shall, within one (1) Business Day of the Company's receipt of a Mandatory Prepayment Exercise Notice, use the portion of the gross cash proceeds received from the applicable financing transaction indicated in the Mandatory Prepayment Exercise Notice (not to exceed 20%) to prepay the Company's then outstanding obligations under the Debentures; provided, such gross cash proceeds shall be applied to prepay all of the Debentures then outstanding pro rata in proportion to the respective outstanding principal amount of each Debenture at the time the Holder delivers the applicable Mandatory Prepayment Exercise Notice.

(b) Optional Redemption at Election of Company.

(i) Subject to the provisions of this Section 6(b), the Company may deliver a notice to the Holder at any time (an "Optional Redemption Notice", and the date such notice is deemed delivered hereunder, the "Optional Redemption Notice Date") of its irrevocable election to redeem all or any portion of the then outstanding principal amount of this Debenture for cash in an amount equal to the sum of (1) 115% of the portion of the outstanding principal amount of this Debenture elected to be redeemed plus 100% of accrued but unpaid interest thereon and (2) all liquidated damages and other amounts then due in respect of the Debenture (the "Optional Redemption Amount") on the 10th calendar day following the Optional Redemption Notice Date (such date, the "Optional Redemption Date", and such redemption, the "Optional Redemption"); provided, notwithstanding anything to the contrary set forth herein, the Company may not deliver an Optional Redemption Notice at a time when an Event of Default has occurred and is continuing.

(ii) The Optional Redemption Amount shall be payable in full on the Optional Redemption Date. If the Company elects to redeem this Debenture pursuant to this Section 6 or any other Debenture, it shall redeem all outstanding Debentures in full simultaneously by paying the Holder the applicable Optional Redemption Amount payable with respect to all outstanding Debentures on the same Optional Redemption Date. If any portion of the Optional Redemption Amount payable in respect of an Optional Redemption shall not be paid by the Company by the applicable due date, interest shall accrue thereon at an interest rate equal to the lesser of two (2%) per annum or the maximum rate permitted by applicable law until such amount is paid in full. Notwithstanding anything herein contained to the contrary, if any portion of the Optional Redemption Amount remains unpaid after such date, the Holder may elect, by written notice to the Company given at any time thereafter, to invalidate such Optional Redemption, ab initio, and, with respect to the Company's failure to honor the Optional Redemption, the Company shall have no further right to exercise such Optional Redemption, unless the Holder elects to proceed with an Optional Redemption in its sole discretion. The Holder may elect to convert the outstanding principal amount of the Debenture pursuant to Section 4 prior to actual payment in cash for any redemption under this Section 6 by the delivery of a Notice of Conversion to the Company. The Company covenants and agrees that it will honor all Notices of Conversion tendered from the time of delivery of the Optional Redemption Notice through the date all amounts owing thereon are due and paid in full.

Section 7. Negative Covenants. As long as any portion of this Debenture remains outstanding, unless the Holder shall have otherwise given prior written consent, the Company shall not, and shall not permit any direct or indirect Subsidiary of the Company to, directly or indirectly:

(a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(c) amend its charter documents, including, without limitation, its certificate of incorporation or memorandum of association, and articles of association or bylaws, as applicable, in any manner that materially and adversely affects any rights of the Holder; for the avoidance of doubt, a stock split or increase in authorized share number shall not be deemed to materially or adversely affect any rights of the Holder;

(d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares or Warrant Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of $100,000 for all officers and directors during the term of this Debenture;

(e) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than (i) the Debentures if on a pro-rata basis, (ii) regularly scheduled principal and interest payments of Indebtedness outstanding as of the Execution Date in accordance with the terms thereof as in effect as of the Execution Date and (iii) regularly scheduled principal and interest payments of Permitted Indebtedness pursuant to the terms thereof; provided that payments pursuant to the foregoing clauses (ii) and (iii) shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exists or occurs;

(f) pay cash dividends or distributions on any equity securities of the Company;

(g) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval);

(h) sell, dispose, assign, exchange, gift, lease, pledge, hypothecate or otherwise transfer, directly or indirectly, in one transaction or a series of transactions, any material portion of its assets outside the ordinary course of business;

(i) engage in any line of business substantially different from (i) those lines of business conducted by the Company and its Subsidiaries on the date hereof or (ii) any business substantially related or incidental, complementary, corollary, synergistic or ancillary thereto or reasonable extensions thereof;

(j) enter into any agreement with respect to any of the foregoing.

Section 8. Events of Default.

(a) "Event of Default" means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

(i) any default in the payment of (A) the principal amount of any Debenture or (B) interest, liquidated damages, any Floor Price Spread Amount, and/or any other amounts owing to a Holder on any Debenture, as and when the same shall become due and payable (whether on a Conversion Date, Share Delivery Date, Optional Redemption Date, or the Maturity Date or by acceleration or otherwise, as applicable) which default, solely in the case of an interest payment or other payment default under clause (B) above, is not cured within 5 Trading Days;

(ii) the Company or any of its Subsidiaries shall fail to observe or perform any other material covenant or agreement contained in this Debenture (other than a breach by the Company of its obligations to deliver Common Stock to the Holder upon conversion, which breach is addressed in clause (xi) below) or in any other Transaction Document, which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such failure;

(iii) any representation or warranty made by or on behalf of the Company, any of its Subsidiaries or any of their respective officers in this Debenture, any other Transaction Document, or any written statement, report, financial statement or certificate pursuant hereto or thereto shall be untrue or incorrect in any material respect as of the date when made or deemed made;

(iv) the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than $300,000 whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

(v) the Company or any Subsidiary shall default on any of its obligations under any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated and which is material to its business(and not covered by clause (v) above), which default is not cured, if possible to cure, within the earlier of (A) 5 Trading Days after notice of such default sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such default;

(vi) the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within 5 Trading Days;

(vii) the Company (and all of its Subsidiaries, taken as a whole) shall be a party to any Change of Control Transaction or Fundamental Transaction;

(viii) the Company or any of its Subsidiaries shall sell dispose, assign, exchange, gift, lease, pledge, hypothecate or otherwise transfer, directly or indirectly, in one transaction or a series of transactions, any asset, undertaking or business outside of the ordinary course of business, without the prior written consent of the Holder other than assets that are replaced or are no longer deemed necessary in the commercially reasonable judgment of the Company;

(ix) the Initial Registration Statement (as defined in the Registration Rights Agreement) shall not have been declared effective by the Commission on or prior to the 90th calendar day after the Closing Date or the Company does not meet the current public information requirements under Rule 144 in respect of the Registrable Securities (as defined in the Registration Rights Agreement);

(x) if, during an Effectiveness Period (as defined in the Registration Rights Agreement), either (a) the effectiveness of any Registration Statement lapses for any reason for more than 10 days or (b) the Holder shall not be permitted to resell Registrable Securities (as defined in the Registration Rights Agreement) under a Registration Statement for a period of more than 20 consecutive Trading Days or 30 non-consecutive Trading Days during any 12 month period; provided, however, that if the Company is negotiating a merger, consolidation, acquisition or sale of all or substantially all of its assets or a similar transaction and, in the written opinion of counsel to the Company, a Registration Statement would be required to be amended to include information concerning such pending transaction(s) or the parties thereto which information is not available or may not be publicly disclosed at the time, the Company shall be permitted an additional 10 consecutive Trading Days during any 12 month period pursuant to this Section 8(a)(x);

(xi) the Company shall fail for any reason to deliver Conversion Shares to a Holder prior to the fifth Trading Day after a Conversion Date pursuant to Section 4(c) or the Company shall provide at any time notice to the Holder, including by way of public announcement, of the Company's intention to not honor requests for conversions of any Debentures in accordance with the terms hereof;

(xii) the electronic transfer by the Company of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a "chill";

(xiii) any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than $300,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days;

(xiv) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

(xv)the Company or any Subsidiary shall attempt to liquidate or dissolve itself without the prior written consent of the Holder;

(xvi) any corporate action, legal proceedings or other procedure or step is taken in relation to: (a) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company or any subsidiary; (b) a composition, compromise, assignment or arrangement with any creditor of the Company or any Subsidiary; (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company or any Subsidiary or any of their assets; (d) enforcement of any Lien over any assets of the Company or any Subsidiary; or (e) or any analogous procedure or step is taken in any jurisdiction in relation to the foregoing.

(xvii) the Company or any of its Subsidiaries shall: (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or assets; (ii) make a general assignment for the benefit of its creditors; (iii) commence a voluntary case under the United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic); (iv) file a petition seeking to take advantage of any bankruptcy, insolvency, moratorium, reorganization or other similar law affecting the enforcement of creditors' rights generally; (v) acquiesce in writing to any petition filed against it in an involuntary case under United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic); (vi) issue a notice of bankruptcy or winding down of its operations or issue a press release regarding same; or (vii) take any action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing;

(xviii) a proceeding or case shall be commenced in respect of the Company or any of its Subsidiaries, without its application or consent, in any court of competent jurisdiction, seeking: (i) the liquidation, reorganization, moratorium, dissolution, winding up, or composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets in connection with the liquidation or dissolution of the Company or any of its Subsidiaries; or (iii) similar relief in respect of it under any law providing for the relief of debtors, and such proceeding or case described in clause (i), (ii) or (iii) shall continue undismissed, or unstayed and in effect, for a period of sixty (60) days or any order for relief shall be entered in an involuntary case under United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic) against the Company or any of its Subsidiaries or action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing shall be taken with respect to the Company or any of its Subsidiaries and shall continue undismissed, or unstayed and in effect for a period of forty-five (45) days;

(xix) any Subsidiary is not or ceases to be a Subsidiary of the Company; or

(xx)any Transaction Document or any interest of the Holder thereunder shall, for any reason, be terminated, invalidated, void or unenforceable.

(b) Remedies Upon Event of Default. If any Event of Default occurs, then the Holder may, by written notice to the Company, declare the entire outstanding principal amount of this Debenture, plus accrued but unpaid interest, liquidated damages and all other amounts then owing in respect thereof to be forthwith due and payable immediately in cash at the Mandatory Default Amount, whereupon the entire principal amount of this Debenture, all such accrued and unpaid interest, liquidated damages and all such other amounts shall become forth with due and payable immediately in cash at the Mandatory Default Amount without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law; provided however, that in the case of any Event of Default pursuant to clause (xvi), (xvii) or (xviii) of Section 8(a), the entire outstanding principal amount of this Debenture, plus accrued but unpaid interest, liquidated damages and all other amounts then owing in respect thereof shall automatically become and be due and payable in cash at the Mandatory Default Amount, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Company.

Section 9. Miscellaneous.

(a) Notices. All notices, requests, demands, and other communications provided for hereunder must be in writing and will be deemed to have been duly given and effective on the earliest of: (a) the date of transmission shown in a delivery confirmation report generated by the sender's email system which indicates that delivery of the email to the recipient's email address has been completed, if such notice or communication is sent via e-mail prior to 5:30 p.m. (New York City time) on any Business Day; (b) the next Business Day after the date of transmission shown in a delivery confirmation report generated by the sender's email system which indicates that delivery of the email to the recipient's email address has been completed, if such notice or communication is sent via e-mail on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day; (c) the second Business Day 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, addressed as follows:

If to the Company:

Safe and Green Development Corporation
100 Biscayne Blvd., #1201, Office 12
Miami, FL 33132
Attention: Nicolai Brune, Chief Financial Officer
e-mail: nbrune@sgdevco.com

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

Email:

If to the Holder:

[_]
[_]
Attention: [_]
e-mail: [_]

or as to the Company or the Holder, at such other address as shall be designated by such party in a written notice to the other party delivered in accordance with this Section 9(a).

(b) Amendments. This Debenture and any provision hereof may only be amended by an instrument in writing signed by the Company and the Holder. The term "Debenture" and all references thereto, as used throughout this instrument, shall mean this instrument as originally executed, or if later amended or supplemented, then as so amended or supplemented.

(c) Assignability. This Debenture shall be binding upon the Company and its successors and assigns, and shall inure to be the benefit of the Holder and its successors and assigns. The Company shall not assign this Debenture or any rights or obligations hereunder without the prior written consent of the Holder. The Holder may, without the consent of the Company, assign its rights hereunder (i) to any of its "affiliates", as that term is defined under the Exchange Act, and (ii) solely during the continuance of any Event of Default, to any other Person. The Company's prior written consent, not to be unreasonably withheld, conditioned or delayed, shall be required for the Holder to assign its rights hereunder to any Person that is not one of its "affiliates", as that term is defined under the Exchange Act during any period in which an Event of Default is not then continuing. Notwithstanding anything in this Debenture to the contrary, this Debenture may be pledged as collateral in connection with a bona fide margin account or other lending arrangement. The Holder and any assignee, by acceptance of this Debenture, acknowledge and agree that following conversion of a portion of this Debenture, the unpaid and unconverted outstanding principal amount of this Debenture represented by this Debenture may be less than the amount stated on the face hereof.

(d) Absolute Obligation. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Debenture at the time, place, and rate, and in the coin or currency, herein prescribed. This Debenture is a direct debt obligation of the Company. This Debenture ranks pari passu with all other Debentures now or hereafter issued under the terms set forth herein.

(e) Lost or Mutilated Debenture. If this Debenture shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Debenture, or in lieu of or in substitution for a lost, stolen or destroyed Debenture, a new Debenture for the principal amount of this Debenture so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Debenture, and of the ownership hereof, reasonably satisfactory to the Company.

(f) Governing Law; Submission to Jurisdiction; Waivers. All questions concerning the construction, validity, enforcement and interpretation of this Debenture shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts 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 such New York Courts, or such New York Courts are 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 Debenture 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 other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Debenture or the transactions contemplated hereby.

(g) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Company or the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture on any other occasion. Any waiver by the Company or the Holder must be in writing.

(h) Severability. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture 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. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

(i) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Debenture. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to 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. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Debenture.

(j) 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.

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

(l) Payments. So long as the Maturity Date has not yet occurred and the Debenture has not been accelerated, payments made hereunder (other than payments effected pursuant to any conversion of the Debenture) shall be applied, (i) first, to reimbursable expenses of the Holder and liquidated damages then due and payable hereunder and/or pursuant to any other Transaction Documents, and (ii) then payments matching specific scheduled payments then due shall be applied to those scheduled payments. At any time after the Maturity Date or after the Debenture has been accelerated, all payments remitted to the Holder by the Company and all proceeds of the collateral securing the Company's obligations hereunder or any enforcement action (including any payments by any guarantors of the Company's obligations hereunder) received by the Holder shall be applied as follows: (i) first, to the reimbursable expenses of the Holder, indemnity claims of the Holder and liquidated damages then due and payable to the Holder hereunder and/or pursuant to any other Transaction Documents, (ii) second, to pay interest due and payable in respect of the Debenture until paid in fall, (iii) third, to pay principal of the Debenture until paid in full; (iv) fourth, to pay any other obligations then due in respect of the Debenture or any other Transaction Documents; and (v) lastly, to the Company or such other Person entitled thereto under applicable law.

(m) Costs and Expenses. The Company agrees to pay the Holder, immediately upon written notice from the Holder, all out-of- pocket costs, expenses, and disbursements, including without limitation, legal expenses and attorneys' fees incurred by the Holder in connection with: (i) the collection, attempted collection, or negotiation and documentation of any settlement or workout of any payment due hereunder, (ii) enforcement of this Debenture or any other Transaction Document (including without limitation, any costs and expenses of any third party provider engaged by the Holder for such purpose), (iii) collection, protection, or enforcement of any rights of the Holder in the collateral securing the Company's obligations hereunder, and (iv) any suit or proceeding whatsoever in regard to this Debenture or the protection or enforcement of the lien of any instrument securing this Debenture, including, without limitation, in connection with any litigation, mediation, bankruptcy or administrative proceeding, and including any appellate proceeding or judicial or non-judicial foreclosure proceeding in connection therewith.

(n) Secured Obligations. Subject to Permitted Liens, the obligations of the Company under the Debentures are secured by (i) a pledge of all assets of the Company and the Subsidiaries pursuant to the terms of the Security Agreement (ii) the Guarantee and (iii) the other Security Documents.

(o) Guaranteed Obligations. The obligations of the Company under the Debentures are guaranteed by each Subsidiary pursuant to the Guarantee (as amended, amended and restated, supplemented, or otherwise modified from time to time).

Section 10. New Subsidiaries. If the Company or any Subsidiary forms or acquires any new direct or indirect Subsidiary, or any Subsidiary merges, amalgamates, or consolidates with or into any other Person and such Subsidiary is not the surviving entity as a result of such merger, amalgamation, or consolidation (any such surviving entity, a "Surviving Entity"), the Company agrees to, or to cause such Subsidiary or Surviving Entity to, concurrently with such formation, acquisition, merger, amalgamation or consolidation, as applicable, (i) provide notice to the Holder of such formation, acquisition, merger, amalgamation or consolidation, (ii) cause such newly formed or acquired Subsidiary or Surviving Entity to become a party to the Subsidiary Guarantee pursuant to an assumption agreement in form and substance acceptable to the Holder, and (iii) execute and/or deliver, and/or cause such newly formed or acquired Subsidiary or Surviving Entity and any other applicable Subsidiary to execute and/or deliver, such other agreements or documents as are determined by the Holder to be necessary or advisable in order for all of the capital shares in such newly formed or acquired Subsidiary or Surviving Entity to be pledged as additional collateral for the obligations of the Company under the Debentures and for such newly formed or acquired Subsidiary or Surviving Entity to pledge all of its assets as additional collateral for the obligations of the Company under the Debentures, and (iv) deliver to the Holder an opinion of counsel in form and substance acceptable to the Holder addressing, among other things, the due authorization, due execution and delivery and enforceability of the foregoing documents with respect to such Subsidiary or Surviving Entity.

Section 11. Disclosure. Upon receipt or delivery by the Company or any Subsidiary of any notice in accordance with the terms of this Debenture, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within two (2) Business Days after such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this 10% Original Issue Discount Secured Convertible Debenture to be duly executed by a duly authorized officer as of the date first above indicated.

SAFE AND GREEN DEVELOPMENT CORPORATION

By: _____
Name:
Title:

[Signature Page to Debenture]

ANNEX A NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the 10% Original Issue Discount Secured Convertible Debenture issued on and due 2026[1] of Safe and Green Development Corporation, a Delaware corporation (together with its successors and assigns, the "Company"), into common stock, par value $0.001 per share (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If the Common Stock is to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that its ownership of the Common Stock does not exceed the amounts specified under Section 4 of this Debenture, as determined in accordance with Section 13(d) of the Exchange Act.

The undersigned agrees to comply with the prospectus delivery requirements under the applicable securities laws in connection with any transfer of the aforesaid Common Stock.

Conversion calculations:

Date to Effect Conversion:

Principal Amount of Debenture to be Converted:

Number of shares of Common Stock to be issued:

Signature:

Name:

Address for Delivery of Certificates for Common Stock:

Or

DWAC Instructions:

Broker No: _____

Account No: _____

1 18 months from the First Closing Date.

Exhibit 4.2

NEITHER THIS SECURITY NOR THE SECURITIES AS TO WHICH THIS SECURITY MAY BE EXERCISED HAVE 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 AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

[FORM OF] COMMON STOCK PURCHASE WARRANT

SAFE AND GREEN DEVELOPMENT CORPORATION

Warrant Shares: [_]
Date of Issuance: [_] ("Issuance Date")

This COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received (in connection with the issuance of the convertible debenture in the principal amount of $[_] to the Holder (as defined below) of even date) (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Debenture"), [_] (including any permitted and registered assigns, the "Holder"), is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date of issuance hereof, to purchase from SAFE AND GREEN DEVELOPMENT CORPORATION, a Delaware corporation (the "Company"), [_] shares of Common Stock (the "Common Stock") (whereby such number may be adjusted from time to time pursuant to the terms and conditions of this Warrant) at the Exercise Price per share then in effect. This Warrant is issued by the Company as of the date hereof in connection with that certain securities purchase agreement dated [_], by and among the Company and the Holder (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"). Capitalized terms used in this Warrant shall have the meanings set forth in the Purchase Agreement unless otherwise defined in the body of this Warrant or in Section 15 below.

For purposes of this Warrant, the term "Exercise Price" shall mean a price per share that is equal to 110% of the closing price of the Common Stock on the Issuance Date, subject to adjustment as provided herein.

Section 1. Exercise of Warrant.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof, the rights represented by this Warrant may be exercised in whole or in part at any time or times during the Exercise Period by delivery of a written notice, in the form attached hereto as Exhibit A (the "Exercise Notice"), of the Holder's election to exercise this Warrant. The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. On or before the second Trading Day (the "Warrant Share Delivery Date") following the date on which the Holder sent the Exercise Notice to the Company or the Company's transfer agent, and upon receipt by the Company of payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which all or a portion of this Warrant is being exercised (the "Aggregate Exercise Price" and together with the Exercise Notice, the "Exercise Delivery Documents") in cash or by wire transfer of immediately available funds (or by cashless exercise, in which case there shall be no Aggregate Exercise Price provided), the Company shall (or direct its transfer agent to) either (i) cause the Warrant Shares purchased hereunder to be transmitted by its transfer agent to the Holder by crediting the account of the Holder's or its designee's balance account with the Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (x) there is an effective registration statement permitting the issuance of the Warrant Shares to, or resale of the Warrant Shares by, the Holder, or (y) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of the Warrants), or otherwise issue and deliver by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise (or deliver such Common Stock in electronic format if requested by the Holder). Upon delivery of the Exercise Delivery Documents, the Holder shall be deemed for all corporate (but not Rule 144) purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the certificates evidencing such Warrant Shares. If this Warrant is submitted in connection with any exercise and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three (3) business days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 5) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised.

If the Company fails to cause its transfer agent to issue to the Holder the respective Common Stock by the respective Warrant Share Delivery Date other than due to fault of the Holder, then the Holder will have the right to rescind such exercise in Holder's sole discretion in addition to all other rights and remedies at law, under this Warrant, or otherwise, and such failure shall also be deemed an event of default under the Debenture, a material breach under this Warrant, and a material breach under the Purchase Agreement. In addition, if the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as partial liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Exercise Notice), $10 per Trading Day (increasing to $20 per Trading Day on the fifth (5^{th}) Trading Day following the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable.

(b) Cashless Exercise. If at any time after 180 days following the First Closing Date ("Registration Deadline"), there is no effective registration statement registering, or no currently prospectus available for, the resale of the Warrant Shares by the Holder (a "Registration Default"), then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(77) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Exercise Notice or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 1(a) or (iii) the VWAP on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) after the close of "regular trading hours" on such Trading Day;

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

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

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrant being exercised, and the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 1(b).

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

Notwithstanding anything herein to the contrary, on the date that is sixty (60) months following the Issuance Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 1(b).

(c) No Fractional Shares. No fractional shares shall be issued upon the exercise of this Warrant as a consequence of any adjustment pursuant hereto. All Warrant Shares (including fractions) issuable upon exercise of this Warrant may be aggregated for purposes of determining whether the exercise would result in the issuance of any fractional share. If, after aggregation, the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then-current fair market value of a Warrant Share by such fraction.

(d) Holder's Exercise Limitations. Notwithstanding anything to the contrary contained herein, the Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 1 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Exercise Notice, the Holder (together with the Holder's affiliates (the "Affiliates"), and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 1(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Holder is solely responsible for any schedules required to be filed in accordance therewith. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 1(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Securities and Exchange Commission (the "Commission"), as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two (2) Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of Common Stock outstanding at the time of the respective calculation hereunder. The limitations contained in this paragraph shall apply to a successor holder of this Warrant. Notwithstanding anything to the contrary contained in this Warrant or the other Transaction Documents, while the Company is listed on the Trading Market and prior to the receipt of the Shareholder Approval, the Holder and the Company agree that nothing in the Transaction Documents shall require the Company to issue any Common Stock to Lender to the extent such issuance would result in the aggregate number of Underlying Shares issued by the Company pursuant to the Transaction Documents to exceed the Conversion Cap.

(e) *Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise*. In addition to any other rights available to the Holder, if the Company fails to cause the Company's transfer agent to transmit to the Holder the Warrant Shares in accordance with the provisions of this Warrant (including but not limited to Section 1(a) above pursuant to an exercise on or before the respective Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder, within one (1) business day of Holder's request, the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the Common Stock so purchased exceeds (y) the product of (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue multiplied by (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder within one (1) business day of Holder's request the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases, or effectuates a cashless exercise hereunder for, Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(f) *Charges, Taxes and Expenses*. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by an Assignment Form, in a form that is reasonably acceptable to Holder and the Company, duly executed by the Holder. The Company shall pay all Transfer Agent fees required for same-day processing of any Exercise Notice and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares. The Company shall pay all attorney fees required for the issuance of attorney legal opinions for removal of restrictive legends on Warrant Shares.

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

Section 2. Certain Adjustments.

(a) Share Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a share dividend or otherwise makes a distribution or distributions of its Common Stock or any other equity or equity equivalent securities payable in Common Stock (which, for avoidance of doubt, shall not include any Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding Common Stock into a larger number of shares, (iii) combines (including by way of reverse share split) outstanding Common Stock into a smaller number of shares or (iv) issues by reclassification of Common Stock any shares of share capital of the Company, then in each case (excluding a reverse share split, in which event this Section shall only be applicable one-time) the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 2(a) shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification. This proportional adjustment shall continue until such time as the Warrant is fully exercised.

(b) Subsequent Equity Sales. If at any time while this Warrant is outstanding, the Company issues or sells, announces any offer, sale, or other disposition of, or in accordance with this Section 2 is deemed to have issued, sold or granted (or makes an announcement regarding the same), any Common Stock and/or Common Stock Equivalents (including the issuance or sale of Common Stock owned or held by or for the account of the Company, but excluding any securities issued or sold or deemed to have been issued or sold solely in connection with an Exempt Issuance) for a consideration per share (the "New Issuance Price") less than a price equal to the Exercise Price in effect immediately prior to such issuance or sale or deemed issuance or sale (such Exercise Price then in effect is referred to herein as the "Applicable Price") (the foregoing a "Dilutive Issuance"), then immediately after such Dilutive Issuance, the Exercise Price then in effect shall be reduced to an amount equal to the New Issuance Price; provided, however, that notwithstanding anything contained herein, if at the time the Holder elects to exercise the Warrant the New Issuance Price is higher than the Exercise Price determined pursuant to the second paragraph of this Warrant, the Exercise Price shall be as determined by such second paragraph. For all purposes of the foregoing (including, without limitation, determining the adjusted Exercise Price and the New Issuance Price under this Section 2(b)), the following shall be applicable:

(i) If the Company in any manner grants, issues or sells (or enters into any agreement to grant, issue or sell) any Options (as defined below) and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option (as defined below) or upon conversion, exercise or exchange of any Common Stock Equivalents issuable upon exercise of any such Option (as defined below) or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option (as defined below) for such price per share. For purposes of this Section 2(b)(i), the "lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option (as defined below) or upon conversion, exercise or exchange of any Common Stock Equivalents issuable upon exercise of any such Option (as defined below) or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting, issuance or sale of such Option (as defined below), upon exercise of such Option (as defined below) and upon conversion, exercise or exchange of any Common Stock Equivalents issuable upon exercise of such Option (as defined below) or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option (as defined below) for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options (as defined below) or upon conversion, exercise or exchange of any Common Stock Equivalents issuable upon exercise of any such Option (as defined below) or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) upon the granting, issuance or sale of such Option (as defined below), upon exercise of such Option (as defined below) and upon conversion, exercise or exchange of any Common Stock Equivalents issuable upon exercise of such Option (as defined below) or otherwise pursuant to the terms thereof plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (as defined below) (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock or of such Common Stock Equivalents upon the exercise of such Options (as defined below) or otherwise pursuant to the terms of or upon the actual issuance of such Common Stock upon conversion, exercise or exchange of such Common Stock Equivalents. "Option" means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities. "Convertible Securities" means any shares or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any Common Stock.

(ii) If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any Common Stock Equivalents and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Common Stock Equivalents for such price per share. For the purposes of this Section 2(b)(ii), the "lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the Common Stock Equivalents and upon conversion, exercise or exchange of such Common Stock Equivalents or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Common Stock Equivalents for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Common Stock Equivalents (or any other Person) upon the issuance or sale of such Common Stock Equivalents plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Common Stock Equivalents (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion, exercise or exchange of such Common Stock Equivalents or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Common Stock Equivalents is made upon exercise of any Options for which adjustment of this Warrant has been or is to be made pursuant to other provisions of this Section 2(b), except as contemplated below, no further adjustment of the Exercise Price shall be made by reason of such issuance or sale.

(iii) If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Common Stock Equivalents, or the rate at which any Common Stock Equivalents are convertible into or exercisable or exchangeable for Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 2(a)), the Exercise Price in effect at the time of such increase or decrease shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or Common Stock Equivalents provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 2(b)(iii), if the terms of any Option or Common Stock Equivalents that were outstanding as of the date this Warrant was issued are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Common Stock Equivalents and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 2(b) shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

(iv) If any Option and/or Common Stock Equivalents and/or Adjustment Right (as defined below) is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Holder, the "Primary Security", and such Option and/or Common Stock Equivalents and/or Adjustment Right (as defined below), the "Secondary Securities"), together comprising one integrated transaction, (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Company either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing) the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of Common Stock was issued (or was deemed to be issued pursuant to Section 2(b)(i) or 2(b)(ii) above, as applicable) in such integrated transaction solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (I) the Black Scholes Value (as defined below) of each such Option, if any, (II) the fair market value (as determined by the Holder in good faith) or the Black Scholes Value (as defined below), as applicable, of such Adjustment Right (as defined below), if any, and (III) the fair market value (as determined by the Holder) of such Common Stock Equivalents, if any, in each case, as determined on a per share basis in accordance with this Section 2(b)(iv). If any Common Stock, Options or Common Stock Equivalents are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Common Stock Equivalents, but not for the purpose of the calculation of the Black Scholes Value (as defined below)) will be deemed to be the net amount of consideration received by the Company therefor. If any Common Stock, Options or Common Stock Equivalents are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Stock, Option or Common Stock Equivalents, but not for the purpose of the calculation of the Black Scholes Value (as defined below)) will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any Common Stock, Options or Common Stock Equivalents are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Common Stock Equivalents, but not for the purpose of the calculation of the Black Scholes Value (as defined below)) will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Common Stock Equivalents (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company). "Adjustment Right" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale hereunder) of Common Stock (other than rights of the type described in Sections 2(c) and 2(d) hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(v) If the Company takes a record of the holders of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or in Common Stock Equivalents or (B) to subscribe for or purchase Common Stock, Options or Common Stock Equivalents, then such record date will be deemed to be the date of the issuance or sale of the Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(vi) This Section 2(b) shall not be applicable to any Exempt Issuance (as such term is defined in the Debentures).

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 2(a) above, if at any time while this Warrant is outstanding the Company grants, issues or sells any Common Stock Equivalents or rights to purchase shares, warrants, securities or other property pro rata to all of the record holders of any class of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) *Pro Rata Distributions*. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all of the holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, shares or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company or any Subsidiary, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person in which the Company is not the surviving entity (other than a reincorporation in a different state or a similar transaction pursuant to which the surviving company remains a public company), (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock (other than a stock split), or any compulsory share exchange pursuant to which the Common Stock are effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement (other than a stock split)) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding Common Stock (not including any Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any Beneficial Ownership Limitation on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any Beneficial Ownership Limitation on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time concurrently with, or within thirty (30) days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, that, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Fundamental Transaction, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration is in the form of cash, shares or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction; provided, further, that if holders of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of Common Stock will be deemed to have received common stock, as applicable, of the Successor Entity (which entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the date that is sixty (60) months following the Issuance Date, (B) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the public announcement of the applicable contemplated Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the highest VWAP during the period beginning on the Trading Day immediately preceding the public announcement of the applicable contemplated Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder's request pursuant to this Section 2(e) and (D) a remaining option time equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the date that is sixty (60) months following the Issuance Date and (E) a zero cost of borrow. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within the later of (i) five (5) Business Days of the Holder's election and (ii) the date of consummation of the Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 2(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of share capital or capital stock, as applicable, of such Successor Entity (or its parent entity) equivalent to the Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of share capital or capital stock, as applicable (but taking into account the relative value of the Common Stock pursuant to such Fundamental Transaction and the value of such shares of share capital or capital stock, as applicable, such number of shares of share capital or capital stock, as applicable, and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(f) Calculations. All calculations under this Section 2 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 2, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(g) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 2, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of share capital of any class or of any rights, (D) the approval of any shareholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the records of the Company, at least seven (7) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of its Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K no later than seven (7) calendar days after such notice was required to be provided the Holder. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 3. Non-Circumvention. The Company covenants and agrees that it will not, by amendment of its Organizational Documents 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 Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder as set forth in this Warrant. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Common Stock upon the exercise of this Warrant, (iii) shall use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant, and (iii) shall, for so long as this Warrant is outstanding, have authorized and reserved, free from preemptive rights, one (1) times the number of shares of Common Stock into which the Warrants are then exercisable into to provide for the exercise of the rights represented by this Warrant (without regard to any limitations on exercise).

Section 4. Warrant Holder Not Deemed a Shareholder. Except as otherwise specifically provided herein, this Warrant, in and of itself, shall not entitle the Holder to any voting rights or other rights as a shareholder of the Company. 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 shareholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

Section 5. Reissuance.

(a) Lost, Stolen or Mutilated Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company will, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as this Warrant so lost, stolen, mutilated or destroyed.

(b) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant shall be of like tenor with this Warrant, and shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date.

Section 6. Transfer. This Warrant shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of the Holder and its successors and assigns. Notwithstanding anything to the contrary herein, the rights, interests or obligations of the Company hereunder may not be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior signed written consent of the Holder, which consent may be withheld at the sole discretion of the Holder (any such assignment or transfer shall be null and void if the Company does not obtain the prior signed written consent of the Holder). This Warrant or any of the severable rights and obligations inuring to the benefit of or to be performed by Holder hereunder may be assigned by Holder to a third party, in whole or in part, without the need to obtain the Company's consent thereto.

Section 7. Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Principal Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

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

Section 8. Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

Section 9. Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a shareholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

Section 10. Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

Section 11. Notices. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with the notice provisions contained in the Purchase Agreement. The Company shall provide the Holder with prompt written notice (i) immediately upon any adjustment of the Exercise Price, setting forth in reasonable detail, the calculation of such adjustment and (ii) at least 20 days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grants, issuances or sales of any shares or other securities directly or indirectly convertible into or exercisable or exchangeable for Common Stock or other property, pro rata to the holders of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

Section 12. Amendment and Waiver. The terms of this Warrant may be amended or waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the Holder.

Section 13. Governing Law and Venue. This Warrant shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws. Any action brought by either party against the other concerning the transactions contemplated by this Warrant shall be brought only in the state court of the State of New York sitting in the City of New York, Borough of Manhattan or, to the extent such court does not have subject matter jurisdiction, the United States District Court for the Southern District of New York. The parties to this Warrant hereby irrevocably waive any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon *forum non conveniens*. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT ENTERED INTO IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT, OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY**. The prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and costs. In the event that any provision of this Warrant or any other agreement delivered in connection herewith is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of any agreement. Each party hereby irrevocably waives personal service of process and consents to process being served in any suit, action or proceeding in connection with this Warrant or any other transaction document entered into in connection with this Warrant 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 the Purchase 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 other manner permitted by law.

Section 14. Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

Section 15. Certain Definitions. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of Common Stock issuable upon exercise of this Warrant.

(b) "Closing Sale Price" means, for any security as of any date, (i) the last closing trade price for such security on the Principal Market, or (ii) if the foregoing does not apply, the last trade price of such security in the over-the-counter market for such security, or (iii) if neither clause (i) or (ii) apply to such security, the average of the bid and ask prices of any market makers for such security. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations to be appropriately adjusted for any share dividend, share split, share combination or other similar transaction during the applicable calculation period.

(c) "Exercise Period" means the period commencing on the Issuance Date and ending on 5:00 p.m. eastern standard time on the date that is sixty (60) months after the Issuance Date.

(d) "Common Stock" means the Company's common stock, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

(e) "Common Stock Equivalents" means any securities of the Company that would entitle the holder thereof to acquire at any time Common Stock, including without limitation any debt, preference shares, 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.

(f) "Principal Market" means the principal securities exchange or trading market where such Common Stock is listed or quoted, including but not limited to any tier of the OTC Markets, any tier of The Nasdaq Stock Market (including The Nasdaq Capital Market), the New York Stock Exchange or the NYSE American, or any successor to such markets.

(g) "Trading Day" means any day on which the Common Stock is listed or quoted on its Principal Market, provided, however, that if the Common Stock is not then listed or quoted on any Principal Market, then any calendar day.

(h) "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, OTCQB or OTCQX (or any successors to any of the foregoing).

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

(*Signature Page Follows*)

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of the Issuance Date set forth above.

SAFE AND GREEN DEVELOPMENT CORPORATION

By: _____
Name:
Title:

[Signature Page to Warrant]

EXHIBIT A

EXERCISE NOTICE

(To be executed by the registered holder to exercise this Common Stock Purchase Warrant)

THE UNDERSIGNED holder hereby exercises the right to purchase _____ of Common Stock ("Warrant Shares") of SAFE AND GREEN DEVELOPMENT CORPORATION, a Delaware corporation (the "Company"), evidenced by the attached copy of the Common Stock Purchase Warrant (the "Warrant"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as (check one):

   □ a cash exercise with respect to_____ Warrant Shares; or

   □ by cashless exercise pursuant to the Warrant.

2. Payment of Exercise Price. If cash exercise is selected above, the holder shall pay the applicable Aggregate Exercise Price in the sum of $ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder Warrant Shares in accordance with the terms of the Warrant.

Dated: _____

[_]

By: _____
Name:
Title:

EXHIBIT B

ASSIGNMENT OF WARRANT

(To be signed only upon authorized transfer of the Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto ____ the right to purchase__ common stock of SAFE AND GREEN DEVELOPMENT CORPORATION, to which the within Common Stock Purchase Warrant relates and appoints _____, as attorney-in-fact, to transfer said right on the books of SAFE AND GREEN DEVELOPMENT CORPORATION with full power of substitution and re-substitution in the premises. By accepting such transfer, the transferee has agreed to be bound in all respects by the terms and conditions of the within Warrant.

Dated: _____

_____
(Signature) *

_____
(Name)

_____
(Address)

_____
(Social Security or Tax Identification No.)

* The signature on this Assignment of Warrant must correspond to the name as written upon the face of the Common Stock Purchase Warrant in every particular without alteration or enlargement or any change whatsoever. When signing on behalf of a corporation, partnership, trust or other entity, please indicate your position(s) and title(s) with such entity.

Exhibit 10.1

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of August 12, 2024, between Safe and Green Development Corporation, a Delaware corporation (the "Company"), and those certain Purchasers on the signature page hereto (each a "Purchaser," and collectively the "Purchasers"). Each of the Company and the Purchasers shall individually be referred to herein as a "Party" and, collectively, as the "Parties."

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act (as defined below), and Rule 506(b) promulgated thereunder, the Company desires to issue and sell to the Purchasers, and the Purchasers, desire to purchase from the Company, securities of the Company as more fully described in this Agreement.

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

ARTICLE I. DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Debentures (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

"$" means United States dollars.

"Acquiring Person" shall have the meaning ascribed to such term in Section 5.7.

"Action" shall have the meaning ascribed to such term in Section 4.1(j).

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

"Agreement" shall have the meaning ascribed to such term in the Preamble.

"Aggregate Subscription Amount" means $9,250,000.

"Applicable Effective Date" shall mean with respect to a Debenture any of the First Registration Effectiveness Date, the Second Registration Effectiveness Date, the Third Registration Effectiveness Date, the Fourth Registration Effectiveness Date, or the Fifth Registration Effectiveness Date, as applicable, if the Underlying Shares issuable upon conversion of such Debenture are registered in the related Registration Statement.

"Arena ELOC" shall mean an equity line of credit facility with an affiliate of the Purchasers.

"BHCA" shall have the meaning ascribed to such term in Section 4.1(kk).

"Blue Sky Laws" means state securities or "blue sky" laws.

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

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally are open for use by customers on such day.

"Buy-In Price" shall have the meaning ascribed to such term in Section 5.1(d).

"Closing" means any closing of the purchase and sale of the Securities pursuant to Section 2.1.

"Closing Date" means any of the First Closing Date, Second Closing Date, Third Closing Date, Fourth Closing Date or Fifth Closing Date, as the context shall require.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Commission" means the United States Securities and Exchange Commission. "Company" shall have the meaning ascribed to such term in the Preamble.

"Common Stock" means the common stock of the Company having a par value per share of $0.001, and any other class of securities into which such securities may hereafter be reclassified or changed.

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

"Confidential Information" means all confidential, proprietary or non-public information, documentation or data (whether written, oral or electronic communications) regarding the Company or any of its Affiliates received by Purchasers or their Representatives, in each case, regardless of whether or not such information, documentation or data is marked or otherwise identified as "confidential". Confidential Information also includes information of third parties where the Company its Affiliates have an obligation of confidentiality with respect to such information. Confidential Information will not, however, include information which (a) is or becomes publicly available other than as a result of a disclosure by Purchasers or their Representatives in violation of this Agreement, (b) is or becomes available to Purchasers or any of its Representatives on a non-confidential basis from a third-party or (c) is or has been independently developed by Purchasers and/or their Representatives without use of or reference to any Confidential Information.

"Conversion Cap" means a number of shares of Common Stock equal to 19.99% of the number of shares of Common Stock outstanding as of the date hereof calculated in accordance with the listing standards and rules of the Nasdaq Stock Market, including Rule 5635(d) (or any successor provisions thereof). For the avoidance of doubt, once Shareholder Approval is obtained, the Conversion Cap shall cease to exist.

"Convertible Securities" shall have the meaning ascribed to such term in Section 4.1(g).

"Debentures" shall have the meaning ascribed to such term in Section 2.1(a).

"Disclosure Schedules" means the disclosure schedules of the Company attached hereto.

"Disclosure Time" means, (i) if this Agreement is signed on a day that is not a Trading Day or after 9:00 a.m. (New York City time) and before midnight (New York City time) on any Trading Day, 9:01 a.m. (New York City time) on the Trading Day immediately following the date hereof, and (ii) if this Agreement is signed between midnight (New York City time) and 9:00 a.m. (New York City time) on any Trading Day, no later than 9:01 a.m. (New York City time) on the date hereof.

"Disqualification Event" shall have the meaning ascribed to such term in Section 4.1(mm).

"Environmental Laws" means any federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder.

"Escrow Agent" means Lucosky Brookman, LLP.

"Escrow Agreement" means the Escrow Agreement among the Company, the Purchasers and the Escrow Agent to be executed and delivered in form and substance satisfactory to the Purchasers, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Evaluation Date" shall have the meaning ascribed to such term in Section 4.1(s).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exempt Issuance" means the issuance of (a) shares of Common Stock, restricted share units or options to employees, officers or directors of the Company pursuant to any share or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise, exchange of or conversion of any Securities issued hereunder, (c) other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with share splits or combinations) or to extend the term of such securities, and (d) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith, and 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 Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and (e) securities issued pursuant to the Arena ELOC.

"Exercise Price" means the exercise price set forth in the Warrants (as may be adjusted pursuant to the terms of the Warrants).

"Export Control Laws" means export control laws and regulations of any jurisdiction applicable to the Company, including the United States Export Administration Regulations and any other equivalent or comparable export control laws and regulations of other countries.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"Federal Reserve" shall have the meaning ascribed to such term in Section 4.1(kk).

"Fifth Closing Date" shall have the meaning ascribed to such term in Section 2.1(c).

"Fifth Closing Principal Amount" means, $2,222,222.

"Fifth Closing Subscription Amount" means $2,000,000 (i.e., the aggregate amount to be paid by the Purchasers for the purchase of the Debenture and Warrant to be issued by the Company on the Fifth Closing Date, reflecting that such Debenture is to be issued with a 10% original issue discount to the face amount thereof).

"Fifth Registration Statement Effectiveness Date" means, with respect to the fifth Registration Statement to be filed by the Company pursuant to the Registration Rights Agreement, no later than the 30th calendar day following the Fifth Closing Date (or, in the event of a "full review" by the Commission, no later than the 120th calendar day following the Fifth Closing Date); provided, however, that in the event the Company is notified by the Commission that the fifth Registration Statement will not be reviewed or is no longer subject to further review and comments, the Fifth Registration Statement Effectiveness Date as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the date otherwise required above, provided, further, if such Fifth Registration Statement Effectiveness Date falls on a day that is not a Trading Day, then the Fifth Registration Statement Effectiveness Date shall be the next succeeding Trading Day.

"First Closing Date" shall have the meaning ascribed to such term in Section 2.1(c).

"First Closing Principal Amount" means $1,388,888.75

"First Closing Subscription Amount" means $1,250,000 (i.e., the aggregate amount to be paid by the Purchasers for the purchase of the Debentures and Warrants to be issued by the Company on the First Closing Date, reflecting that such Debentures are to be issued with a 10% original issue discount to the face amount thereof).

"First Registration Statement Effectiveness Date" means, with respect to the first Registration Statement to be filed by the Company pursuant to the Registration Rights Agreement, no later than the 30th calendar day following the First Closing Date (or, in the event of a "full review" by the Commission, no later than the 120th calendar day following the First Closing Date); provided, however, that in the event the Company is notified by the Commission that the first Registration Statement will not be reviewed or is no longer subject to further review and comments, the First Registration Statement Effectiveness Date as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the date otherwise required above, provided, further, if such First Registration Statement Effectiveness Date falls on a day that is not a Trading Day, then the First Registration Statement Effectiveness Date shall be the next succeeding Trading Day.

"Fourth Closing Date" shall have the meaning ascribed to such term in Section 2.1(c).

"Fourth Closing Principal Amount" means, $2,222,222.

"Fourth Closing Subscription Amount" means $2,000,000 (i.e., the aggregate amount to be paid by the Purchasers for the purchase of the Debentures and Warrants to be issued by the Company on the Fourth Closing Date, reflecting that such Debentures are to be issued with a 10% original issue discount to the face amount thereof).

"Fourth Registration Statement Effectiveness Date" means, with respect to the fourth Registration Statement to be filed by the Company pursuant to the Registration Rights Agreement, no later than the 30th calendar day following the Fourth Closing Date (or, in the event of a "full review" by the Commission, no later than the 120th calendar day following the Fourth Closing Date); provided, however, that in the event the Company is notified by the Commission that the fourth Registration Statement will not be reviewed or is no longer subject to further review and comments, the Fourth Registration Statement Effectiveness Date as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the date otherwise required above, provided, further, if such Fourth Registration Statement Effectiveness Date falls on a day that is not a Trading Day, then the Fourth Registration Statement Effectiveness Date shall be the next succeeding Trading Day.

"GAAP" means the United States generally accepted accounting principles.

"Guarantee" means the Guarantee made the Company's Subsidiaries in favor of the Purchasers, in the form Exhibit C attached hereto, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Governmental Authority" means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, any municipality, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through share or capital ownership or otherwise, by any of the foregoing, including any central bank stock exchange regulatory body arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

"Hazardous Materials" shall have the meaning set forth in the definition of Environmental Laws. "I-Bankers" means I-Bankers Securities, Inc.

"Import Control Laws" means import control laws and regulations of any jurisdiction applicable to the Company, including those administered by the United States Customs and Border Protection and Immigration and Customs Enforcement Agencies, and any other equivalent or comparable import control laws and regulations of other countries.

"Indebtedness" shall have the meaning ascribed to such term in Section 4.1(bb).

"Indemnified Person" shall have the meaning ascribed to such term in Section 5.10.

"Intellectual Property" means: (a) patents, patent applications and patent disclosures, together with all reissues, continuations, continuations-in-part, divisionals, revisions, extensions or reexaminations thereof; (b) trademarks and service marks, trade dress, logos, trade names, corporate names, brands, slogans, and other source identifiers, and all applications, registrations, and renewals in connection therewith, together with all of the goodwill associated with the foregoing; (c) copyrights, and other works of authorship (whether or not copyrightable), and moral rights, and registrations and applications for registration, renewals and extensions thereof; (d) trade secrets and know-how (including ideas, formulas, compositions, inventions (whether or not patentable or reduced to practice)), customer and supplier lists, improvements, protocols, processes, methods and techniques, research and development information, industry analyses, algorithms, architectures, layouts, drawings, specifications, designs, plans, methodologies, proposals, industrial models, technical data, financial and accounting data (including pricing and cost information), and all other data, databases and database rights; (e) Internet domain names and social media accounts; (f) rights of privacy and publicity and all other intellectual property or proprietary rights of any kind or description recognized under applicable laws; (g) copies and tangible embodiments of any of the foregoing, in whatever form or medium; and (h) all legal rights arising from items (a) through (f), including the right to prosecute and perfect such interests and rights to sue, oppose, cancel, interfere, and enjoin based upon such interests, including such rights based on past infringement, if any, in connection with any of the foregoing.

"Issuer Covered Person" shall have the meaning ascribed to such term in Section 4.1(mm).

"Legend Removal Date" shall have the meaning ascribed to such term in Section 5.1(c).

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Material Adverse Effect" shall have the meaning assigned to such term in Section 4.1(b).

"Material Permits" shall have the meaning ascribed to such term in Section 4.1(n).

"Maximum Rate" shall have the meaning ascribed to such term in Section 6.17.

"MFN Right" shall have the meaning ascribed to such term in Section 5.15.

"Money Laundering Laws" shall have the meaning ascribed to such term in Section 4.1(ll).

"Nasdaq" means The Nasdaq Stock Market LLC.

"Notice Termination Time" shall have the meaning ascribed to such term in Section 5.16(c).

"OFAC" shall have the meaning ascribed to such term in Section 4.1(jj).

"Organizational Documents" means with respect to any entity, the memorandums of association, articles of association, certificates of incorporation, certificates of formation, by-laws, operating agreements, constitutions, registration statements and equivalent organizational documents of such entity, each as amended, amended and restated or otherwise modified from time to time, for such entity.

"Participation Maximum" shall have the meaning ascribed to such term in Section 5.16(a).

"Party" shall have the meaning ascribed to such term in the Preamble.

"Perfection Certificate" shall have the meaning ascribed to such term in Section 2.2(a).

"Permitted Lien" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet delinquent by more than 30 days or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the business of the Company or any Subsidiary, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the business of the Company or any Subsidiary business which secure obligations which are not more than 30 days overdue, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a), (b), and (d) thereunder, and (d) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased; (e) Liens in existence on the date of this Agreement and which have been set forth on Schedule 4.1(o) hereto; (f) Liens of goods securing trade letters of credit not to exceed $500,000; (g) Liens existing on any real or personal property prior to the time of acquisition or placed on property being acquired by Company or a Subsidiary to secure a portion of the purchase price; (h) Liens renewing, extending Liens permitted; (i) Liens in respect of property or assets securing obligations of a Subsidiary to the Company, with the prior written approval of the Purchasers.

"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.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Public Information Failure" shall have the meaning ascribed to such term in Section 5.3(b).

"Public Information Failure Payments" shall have the meaning ascribed to such term in Section 5.3(b).

"Purchasers" shall have the meaning ascribed to such term in the Preamble.

"Purchasers Representative" shall have the meaning ascribed to such term in the Preamble.

"Registration Rights Agreement" means the Registration Rights Agreement, among the Company and the Purchasers, to be executed and delivered in form and substance satisfactory to the Purchasers.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by the Purchasers as provided for in the Registration Rights Agreement.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, disposing, or other release into or through the environment, and any abandonment or discarding of barrels, containers, or other closed receptacles containing any Hazardous Materials.

"Released Claims" shall have the meaning ascribed to such term in Section 5.23.

"Remedies Exceptions" shall have the meaning ascribed to such term in Section 4.1(c).

"Representatives" means, with respect to any Person, such Person's Affiliates and its Affiliates' respective directors, officers, employees, advisors, agents and other representatives.

"Required Approvals" shall have the meaning ascribed to such term in Section 4.1(e).

"Required Minimum" means, as of any date, a number equal to two times (2x) the aggregate number of shares of Common Stock issuable pursuant to the Debentures and Warrants then outstanding based on the Floor Price and the applicable Exercise Prices, respectively, ignoring any conversion or exercise limits set forth therein.

"Required Minimum Failure" shall have the meaning ascribed to such term in Section 5.11(a).

"Required Minimum Failure Payments" shall have the meaning ascribed to such term in Section 5.11(a).

"Reserved Shares" shall have the meaning ascribed to such term in Section 5.17.

"Reserved Shares Deficit" shall have the meaning ascribed to such term in Section 5.17.

"Restricted Person" means: (a) any individual or entity that is a citizen or resident of, located in, or organized under the laws of, or acting for or on behalf of, a Sanctioned Country; (b) the government of any Sanctioned Country; (c) any government that is the subject or target of restrictions under Sanctions Law; or (d) any individual or entity that is, or any entity that is owned or controlled directly or indirectly by, or acts for or on behalf of individuals or entities that are designated on any of the following lists, as updated, substituted, or replaced from time to time:

(i) the United Nations Security Council's "Consolidated United Nations Security Council Sanctions List";

(ii) the lists of persons subject to Sanctions Laws, as administered by the U.S. Department of the Treasury, including OFAC's "Specially Designated Nationals and Blocked Persons List," the "Foreign Sanctions Evaders," and the "Sectoral Sanctions Identifications List";

(iii) the U.S. Department of Commerce, Bureau of Industry and Security's "Entity List," "Denied Persons List," or "Unverified List";

(iv) the U.S. Department of State's list of debarred parties and lists of individuals and entities that have been designated pursuant to sanctions and/or non-proliferation statutes that it administers and related executive orders;

(v) the European Union Commission's "Consolidated list of persons, groups and entities subject to EU financial sanctions" or individuals or entities that are listed in any Annex to EU Council Regulation 833/2014 (as amended);

(vi) Her Majesty's Treasury of United Kingdom's "Consolidated List of Financial Sanctions Targets in the UK"; and

(vii) any additional list promulgated, designated, or enforced by a Sanctions Authority.

"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 as such Rule.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Sanctioned Country" means at any time, a country or territory that is the target of comprehensive economic or trade sanctions under Sanctions Laws. As of the date of this Agreement, Sanctioned Countries include the Crimea Region, Cuba, Iran, North Korea and Syria.

"Sanctions Authority" means the United Nations Security Council; U.S. Department of the Treasury; the U.S. Department of Commerce; the U.S. Department of State; the European Union Council or Commission (including any present or future member state of the European Union); Her Majesty's Treasury of the United Kingdom; and any other government or regulatory body, institution or agency with authority to enact Sanctions Laws in any country and/or territory with jurisdiction over any Party.

"Sanctions Laws" means all economic, trade, or financial sanctions statutes, regulations, executive orders, decrees, judicial decisions, restrictive measures, or other acts having the force of law enacted, adopted, administered, imposed, or enforced from time to time by any Sanctions Authority.

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002.

"SEC Reports" means all reports, schedules, forms, statements and other documents required to be filed under the Securities Act and the Exchange Act, including pursuant to Sections 13(a) or 15(d) thereof (including the exhibits thereto and documents incorporated by reference therein).

"Second Closing Date" shall have the meaning ascribed to such term in Section 2.1(c).

"Second Closing Principal Amount" means $2,222,222.

"Second Closing Subscription Amount" means $2,000,000 (i.e., the aggregate amount to be paid by the Purchasers for the purchase of the Debentures and Warrants to be issued by the Company on the Second Closing Date, reflecting that such Debentures are to be issued with a 10% original issue discount to the face amount thereof).

"Second Registration Statement Effectiveness Date" means, with respect to the second Registration Statement to be filed by the Company pursuant to the Registration Rights Agreement, no later than the 30th calendar day following the Second Closing Date (or, in the event of a "full review" by the Commission, no later than the 120th calendar day following the Second Closing Date); provided, however, that in the event the Company is notified by the Commission that the second Registration Statement will not be reviewed or is no longer subject to further review and comments, the Second Registration Statement Effectiveness Date as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the date otherwise required above, provided, further, if such Second Registration Statement Effectiveness Date falls on a day that is not a Trading Day, then the Second Registration Statement Effectiveness Date shall be the next succeeding Trading Day.

"Securities" means the Debentures, the Warrants, the Warrant Shares and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Agreement" means a Security Agreement, among the Company, the Subsidiaries and the Purchasers, in the form of Exhibit D attached hereto, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Seller Representative" shall have the meaning ascribed to such term in the Preamble.

"Sellers" shall have the meaning ascribed to such term in the Preamble.

"Shareholder Approval" means such approval as may be required by the applicable rules and regulations of Nasdaq (or any successor entity) from the shareholders of the Company with respect to the transactions contemplated by the Transaction Documents, including the issuance of all of the Underlying Shares and issuance of Common Stock under the Arena ELOC, in excess of 19.99% of the issued and outstanding Common Stock pursuant to the Transactions to the Purchasers.

"Short Sales" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include locating and/or borrowing shares of Common Stock).

"Significant Subsidiary" has the meaning ascribed to such term in Rule 1-02(w) of Regulation S-X.

"Software" means all computer software (in object code or source code format), data and databases, and related documentation and materials.

"Standard Settlement Period" shall have the meaning ascribed to such term in Section 5.1(c).

"Subsequent Financing" shall have the meaning ascribed to such term in Section 5.16(a).

"Subsequent Financing Terms" shall have the meaning ascribed to such term in Section 5.15.

"Subsequent Financing Notice" shall have the meaning ascribed to such term in Section 5.16(b).

"Subsidiary" or "Subsidiaries" means any subsidiary or multiple subsidiaries of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof, including in connection with and following the date of the Merger.

"Tax" or "Taxes" means any federal, state, provincial, local and foreign income, profits, franchise, gross receipts, environmental, share capital, severances, stamp, payroll, sales, employment, unemployment, disability, use, real property, personal property, unclaimed property, withholding, excise, production, value added, goods and services, occupancy and other taxes, duties or assessments of any nature whatsoever, together with all interest, penalties and additions imposed with respect to such amounts and any interest in respect of such penalties and additions.

"Third Closing Date" shall have the meaning ascribed to such term in Section 2.1(c).

"Third Closing Principal Amount" means, $2,222,222.

"Third Closing Subscription Amount" means $2,000,000 (i.e., the aggregate amount to be paid by the Purchasers for the purchase of the Debentures and Warrants to be issued by the Company on the Third Closing Date, reflecting that such Debentures are to be issued with a 10% original issue discount to the face amount thereof).

"Third Registration Statement Effectiveness Date" means, with respect to the third Registration Statement to be filed by the Company pursuant to the Registration Rights Agreement, no later than the 30th calendar day following the Third Closing Date (or, in the event of a "full review" by the Commission, no later than the 120th calendar day following the Third Closing Date); provided, however, that in the event the Company is notified by the Commission that the third Registration Statement will not be reviewed or is no longer subject to further review and comments, the Third Registration Statement Effectiveness Date as to such Registration Statement shall be the fifth (5th) Trading Day following the date on which the Company is so notified if such date precedes the date otherwise required above, provided, further, if such Third Registration Statement Effectiveness Date falls on a day that is not a Trading Day, then the Third Registration Statement Effectiveness Date shall be the next succeeding Trading Day.

"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, or the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Debentures, the Warrants, the Registration Rights Agreement, the Guarantee and the Security Agreement.

"Transactions" means the transactions contemplated by this Agreement and the other Transaction Documents.

"Transfer Agent" means Equiniti Trust Company, the current transfer agent of the Company, with a mailing address of 1110 Centre Pointe Curve, Suite 101, Mendota Heights, MN 55120, Attn: Cynthia Armenia, Email: cynthia.armenia@equiniti.com, and any successor transfer agent of the Company.

"Trustee" shall have the meaning ascribed to such term in Section 4.3(l).

"Trust Account" shall have the meaning ascribed to such term in Section 4.3(l).

"Trust Agreement" shall have the meaning ascribed to such term in Section 4.3(l).

"Trust Fund" shall have the meaning ascribed to such term in Section 4.3(l).

"Underlying Shares" means the Warrant Shares and the Common Stock issued and issuable pursuant to the terms of the Debentures, in each case without respect to any limitation or restriction on the conversion of the Debentures or the exercise of the Warrants.

"Variable Rate Transaction" shall have the meaning ascribed to such term in Section 5.12(b).

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

"Warrants" shall have the meaning ascribed to such term in Section 2.1(b).

"Warrant Shares" shall have the meaning ascribed to such term in Section 2.1(b).

ARTICLE II.
PURCHASE AND SALE

2.1 Purchase and Sale of Debentures and Warrants.

(a) Debentures. Upon the terms and subject to the conditions set forth herein, (i) on the First Closing Date, if the Company and Purchasers mutually agreed to proceed with the First Closing, the Company agrees to sell to the Purchasers, and the Purchasers agree to purchase from the Company, a 10% original issue discount secured convertible debenture issued by the Company in the amount of the First Closing Principal Amount, (ii) on the Second Closing Date, if the Company and Purchasers mutually agreed to proceed with the Second Closing, the Company agrees to sell to the Purchasers, and the Purchasers agree to purchase from the Company, a 10% original issue discount secured convertible debenture issued by the Company in the amount of the Second Closing Principal Amount, (iii) on the Third Closing Date, if the Company and Purchasers mutually agreed to proceed with the Third Closing, the Company agrees to sell to the Purchasers, and the Purchasers agree to purchase from the Company, a 10% original issue discount secured convertible debenture issued by the Company in the amount of the Third Closing Principal Amount, (iv) on the Fourth Closing Date, if the Company and Purchasers mutually agreed to proceed with the Fourth Closing, the Company agrees to sell to the Purchasers, and the Purchasers agree to purchase from the Company, a 10% original issue discount secured convertible debenture issued by the Company in the amount of the Fourth Closing Principal Amount, and (v) on the Fifth Closing Date, if the Company and Purchasers mutually agreed to proceed with the Fifth Closing, the Company agrees to sell to the Purchasers, and the Purchasers agree to purchase from the Company, a 10% original issue discount secured convertible debenture issued by the Company in the amount of the Fifth Closing Principal Amount (each such 10% original issue discount secured convertible debenture, as may be amended, amended and restated or otherwise modified from time to time, a "Debenture", and collectively, the "Debentures"). Each Debenture shall be substantially in the form of Exhibit A attached hereto with the blanks appropriately filled and shall mature on the date that is eighteen (18) months from the First Closing Date.

(b) Warrants. As additional consideration for the Purchasers' purchase of Debentures hereunder, the Company shall issue to the Purchasers, simultaneously with the issuance of each Debenture purchased by the Purchasers from the Company on the applicable Closing Date, a warrant to purchase the Company's Common Stock (each, as the same may be amended, amended and restated or otherwise modified from time to time, a "Warrant", and collectively, the "Warrants"). Each such Warrant shall, among other things, (i) provide for the purchase by the Purchasers of a number of shares of Common Stock (the "Warrant Shares") equal to 20% of the total principal amount of the related Debenture purchased by the Purchasers on the applicable Closing Date hereunder divided by 92.5% of the lowest daily VWAP during the Common Stock for the ten (10) consecutive Trading Day period ended on the last Trading Day immediately preceding such Closing Date, subject to adjustment upon the occurrence of certain events as set forth in such Warrant; (ii) be exercisable at the Exercise Price; and (iii) be substantially in the form of Exhibit B attached hereto.

(c) Closings. There may be up to five (5) Closings until such time as the earlier to occur of (1) subscriptions for the sale of the Debentures hereunder in an aggregate principal amount equal to the Aggregate Subscription Amount are funded by the Purchasers and (2) the termination of this Agreement in accordance with Section 6.1.

(i) Subject to Section 6.1, the Purchasers and the Company shall, if the Company and Purchasers mutually agree, to consummate the first Closing on the Trading Day on which all conditions to the Purchasers' obligation set forth in Section 3.1(a) and the Company's obligation set forth in Section 3.1(b), in each case, have been satisfied or waived, unless the Parties mutually agree in writing to consummate the first Closing on a different date (the "First Closing Date").

(ii) Subject to Section 6.1 and provided that all conditions to the Purchasers's obligation set forth in Section 3.2(a) and the Company's obligation set forth in Section 3.2(b), in each case, have been satisfied or waived on or prior to the Second Closing Date (as defined below), the Purchasers and the Company shall, if the Company and Purchasers mutually agree, consummate the second Closing on the later (y) the fifth (5^{th}) Trading Day following the First Registration Statement Effectiveness Date (or if such day is not a Trading Day, on the next succeeding Trading Day) and (z) such date as the outstanding principal balance of the Debenture issued in the first Closing is less than $100,000.00, unless the Parties mutually agree in writing to consummate the second Closing on a different date (the "Second Closing Date"); provided, notwithstanding anything to the contrary set forth herein, the respective obligations of the Purchasers and the Company to consummate the second Closing shall be contingent on the satisfaction of the following additional condition, unless the Parties mutually agree in writing to waive any such condition: the median daily turnover of the Common Stock on the Company's principal Trading Market for the thirty (30) consecutive Trading Day period ended as of the last Trading Day immediately preceding the proposed Second Closing Date is greater than $200,000 (the "Second Closing Liquidity Condition"); provided further, that if the Second Closing Condition is not satisfied, the Company and the Purchasers shall have the option, but not any obligation, to consummate a second Closing on such modified terms as the Parties hereto shall mutually agree in writing.

(iii) Subject to Section 6.1 and provided that all conditions precedent to the Purchasers' obligation set forth in Section 3.3(a) and the Company's obligation set forth in Section 3.3(b), in each case, have been satisfied or waived on or prior to the Third Closing Date (as defined below), the Purchasers and the Company shall, if the Company and Purchasers mutually agree, consummate the third Closing on the later (y) the fifth (5^{th}) Trading Day following the Second Registration Statement Effectiveness Date (or if such day is not a Trading Day, on the next succeeding Trading Day) and (z) such date as the outstanding aggregate principal balance of the Debentures issued in the first Closing and second Closing is less than $100,000.00, unless the Parties mutually agree in writing to consummate the third Closing on a different date (the "Third Closing Date"); provided, notwithstanding anything to the contrary set forth herein, the respective obligations of the Purchasers and the Company to consummate the third Closing shall be contingent on the satisfaction of the following additional condition, unless the Parties mutually agree in writing to waive any such condition: the median daily turnover of the Common Stock on the Company's principal Trading Market for the thirty (30) consecutive Trading Day period ended as of the last Trading Day immediately preceding the proposed Third Closing Date is greater than $200,000 (the "Third Closing Liquidity Condition"); provided further, that if the Third Closing Condition is not satisfied, the Company and the Purchasers shall have the option, but not any obligations, to consummate a third Closing on such modified terms as the Parties hereto shall mutually agree in writing.

(iv) Subject to Section 6.1 and provided that all conditions precedent to the Purchasers' obligations set forth in Section 3.3(a) and the Company's obligation set forth in Section 3.3(b), in each case, have been satisfied or waived on or prior to the Fourth Closing Date (as defined below), the Purchasers and the Company shall, if the Company and Purchasers mutually agree, consummate the fourth Closing on the later (y) the fifth (5^{th}) Trading Day following the Third Registration Statement Effectiveness Date (or if such day is not a Trading Day, on the next succeeding Trading Day) and (z) such date as the outstanding aggregate principal balance of the Debentures issued in the first Closing, second Closing and third Closing is less than $100,000.00, unless the Parties mutually agree in writing to consummate the third Closing on a different date (the "Fourth Closing Date"); provided, notwithstanding anything to the contrary set forth herein, the respective obligations of the Purchasers and the Company to consummate the fourth Closing shall be contingent on the satisfaction of the following additional condition, unless the Parties mutually agree in writing to waive any such condition: the median daily turnover of the Common Stock on the Company's principal Trading Market for the thirty (30) consecutive Trading Day period ended as of the last Trading Day immediately preceding the proposed Fourth Closing Date is greater than $200,000 (the "Fourth Closing Liquidity Condition"); provided further, that if the Fourth Closing Condition is not satisfied, the Company and the Purchasers shall have the option, but not any obligation, to consummate a fourth Closing on such modified terms as the Parties hereto shall mutually agree in writing.

(v) Subject to Section 6.1 and provided that all conditions precedent to the Purchasers' obligations set forth in Section 3.3(a) and the Company's obligation set forth in Section 3.3(b), in each case, have been satisfied or waived on or prior to the Fifth Closing Date (as defined below), the Purchasers and the Company shall, if the Company and Purchasers mutually agree consummate the fifth Closing on the later (y) the fifth (5^{th}) Trading Day following the Fourth Registration Statement Effectiveness Date (or if such day is not a Trading Day, on the next succeeding Trading Day) and (z) such date as the outstanding aggregate principal balance of the Debentures issued in the first Closing, second Closing, third Closing and fourth Closing is less than $100,000.00, unless the Parties mutually agree in writing to consummate the third Closing on a different date (the "Fifth Closing Date"); provided, notwithstanding anything to the contrary set forth herein, the respective obligations of the Purchasers and the Company to consummate the fifth Closing shall be contingent on the satisfaction of the following additional condition, unless the Parties mutually agree in writing to waive any such condition: the median daily turnover of the Common Stock on the Company's principal Trading Market for the thirty (30) consecutive Trading Day period ended as of the last Trading Day immediately preceding the proposed Fifth Closing Date is greater than $200,000 (the "Fifth Closing Liquidity Condition"); provided further, that if the Fifth Closing Condition is not satisfied, the Company and the Purchasers shall have the option, but not any obligation, to consummate a fifth Closing on such modified terms as the Parties hereto shall mutually agree in writing.

(vi) On or prior to the applicable Closing Date, (1) the Purchasers shall have delivered to the Escrow Agent pursuant to the instructions contained on Schedule 2.1(c), via wire transfer or a certified check, immediately available funds equal to the Purchasers' First Closing Subscription Amount, Second Closing Subscription Amount, Third Closing Subscription Amount, Fourth Closing Subscription Amount, or Fifth Closing Subscription Amount, as applicable, in each case, minus applicable legal fees and expenses of the Purchasers to be reimbursed to the Purchasers in accordance with Section 6.2; (2) the Company shall have delivered to the Purchasers a Debenture and Warrant in the applicable principal amount as determined in accordance with Sections 2.1(a) and 2.1(b), respectively, and (3) the Company and the Purchasers shall deliver or cause to be delivered each of the items set forth in Sections 2.2, 2.3, 2.4, 2.5 or 2.6 hereof, as applicable, and Sections 3.1, 3.2, and 3.3 hereof, as applicable. Upon the Escrow Agent's receipt of the First Closing Subscription Amount, Second Closing Subscription Amount, Third Closing Subscription Amount, Forth Closing Subscription Amount, or Fifth Closing Subscription Amount, as applicable, in each case, minus applicable legal fees and expenses of the Purchasers to be reimbursed to the Purchasers in accordance with Section 6.2 and provided that each of the other conditions to the Purchasers' and the Company's respective obligations to consummate the applicable Closing set forth herein has been satisfied or waived on or prior to the applicable Closing Date, the Company and the Purchasers shall direct the Escrow Agent to release the Purchasers' subscription funds for the applicable Closing from the escrow account to the Company's account in accordance with the Escrow Agreement; provided, that if any such condition to the Purchasers' or the Company's respective obligations to consummate any Closing hereunder has not been satisfied or waived on or prior to the applicable Closing Date, the Company and the Purchasers shall, within one (1) Business Day following the Company's receipt of written notice from the Purchasers requesting the same, direct the Escrow Agent to return to the Purchasers any subscription funds of the Purchasers that were received in escrow in accordance with the Escrow Agreement.

2.2 First Closing Deliveries.

(a) Company First Closing Deliveries. On or prior to the First Closing Date, the Company shall deliver or cause to be delivered to the Purchasers the following, in form and substance satisfactory to the Purchasers:

(i) this Agreement duly executed by the Company ;

(ii) a Debenture in the original principal amount of the First Closing Principal Amount duly executed by the Company, registered in the name of the Purchasers;

(iii) a Warrant duly executed by the Company, registered in the name of the Purchasers;

(iv) the duly executed Guarantee;

(v) the Registration Rights Agreement duly executed by the Company;

(vi) the Security Agreement duly executed by the Company and each Subsidiary;

(vii) a perfection certificate, duly executed by the Company, and each Subsidiary (the "Perfection Certificate");

(viii) a duly executed Escrow Agreement executed by the Company and the Escrow Agent;

(ix) certificates of appropriate officials as to the existence and good standing (or similar documents applicable for such jurisdictions) of the Company and each Subsidiary, dated as of a date reasonably close to the First Closing Date ;

(x) a certificate, dated as of such First Closing Date, duly executed, and delivered by an officer of the Company and each Subsidiary, certifying the resolutions of the Company's and each Subsidiary's Board of Directors, manager or others performing similar functions with respect to the Company and each Subsidiary, then in full force and effect authorizing, all aspects of the transactions contemplated hereby and the execution, delivery and performance by the Company and each Subsidiary of each Transaction Document to be executed to which the Company and each Subsidiary is a party, as applicable, and the transactions contemplated hereby and thereby;

(xi) an opinion of Blank Rome LLP counsel to the Company, regarding the due authorization, good standing and corporate authority of the Company to enter into, and the enforceability of, this Agreement, the Debentures, the Warrants and any other Transaction Documents to be executed by the Company hereunder on or prior to the First Closing Date;

(xii) copies of the Company's and each of its Subsidiaries' Organizational Documents as in effect on the First Closing Date;

(xiii) all information regarding any Action against the Company, its Subsidiaries and any of its Affiliates thereof, including but not limited to any settlements, inquiries or subpoenas, since the Company's inception;

(xiv) all information requested by the Purchasers as part of its know-your-customer requirements; and

(xv) such other approvals, opinions of counsel to the Company, or documents as the Purchasers may reasonably request.

(b) Purchasers First Closing Deliveries. On or prior to the First Closing Date, the Purchasers shall deliver or cause to be delivered to the Company the following:

(i) this Agreement duly executed by the Purchasers;

(ii) the Registration Rights Agreement duly executed by the Purchasers;

(iii) the Security Agreement duly executed by the Purchasers;

(iv) the Escrow Agreement duly executed by the Purchasers; and

(v) the Purchasers' First Closing Subscription Amount, minus applicable legal fees and expenses of the Purchasers to be reimbursed to the Purchasers pursuant to Section 6.2, by wire transfer to the Escrow Agent to the account specified in Schedule 2.1(c) hereto; provided, that, $250,000 of the First Closing Subscription Amount, shall be retained and held in escrow by the Escrow Agent in accordance with the terms of the Escrow Agreement, to be released to the Company upon the First Registration Statement Effectiveness Date.

2.3 Second Closing Deliveries.

(a) Company Second Closing Deliveries. On or prior to the Second Closing Date, the Company shall deliver or cause to be delivered to the Purchasers the following, in form and substance satisfactory to the Purchasers:

(i) a Debenture in the original principal amount of the Second Closing Principal Amount duly executed by the Company, registered in the name of the Purchasers;

(ii) a Warrant duly executed by the Company, registered in the name of the Purchasers;

(iii) certificates of appropriate officials as to the existence and good standing (or similar documents applicable for such jurisdictions) of the Company and, the Subsidiaries, dated as of a date reasonably close to the Third Closing Date;

(iv) a certificate, dated as of such Second Closing Date, duly executed, and delivered by an officer of the Company and each Subsidiary, certifying the resolutions of the Company's and each Subsidiary's Board of Directors, manager or others performing similar functions with respect to the Company and each Subsidiary, then in full force and effect authorizing, all aspects of the transactions contemplated hereby and the execution, delivery and performance by the Company and each Subsidiary of each Transaction Document to be delivered to which the Company and each Subsidiary is a party, as applicable, and the transactions contemplated hereby and thereby;

(v) an opinion of counsel to the Company;

(vi) all information regarding any Action against the Company, its Subsidiaries and any of its Affiliates thereof, including but not limited to any settlements, inquiries or subpoenas, since the prior Closing Date; and

(vii) such other approvals, opinions of counsel to the Company, or documents as the Purchasers may reasonably request.

(b) Purchasers Second Closing Deliveries. On or prior to the Second Closing Date, the Purchasers shall deliver or cause to be delivered to the Company the Purchasers' Second Closing Subscription Amount, minus applicable legal fees and expenses of the Purchasers to be reimbursed to the Purchasers pursuant to Section 6.2, by wire transfer to the Escrow Agent to the account specified in Schedule 2.1(c) hereto.

2.4 Third Closing Deliveries.

(a) Company Third Closing Deliveries. On or prior to the Third Closing Date, the Company shall deliver or cause to be delivered to the Purchasers the following, in form and substance satisfactory to the Purchasers:

(i) a Debenture in the original principal amount of the Third Closing Principal Amount duly executed by the Company, registered in the name of the Purchasers;

(ii) a Warrant duly executed by the Company, registered in the name of the Purchasers;

(iii) certificates of appropriate officials as to the existence and good standing (or similar documents applicable for such jurisdictions) of the Company and the Subsidiaries, dated as of a date reasonably close to the Third Closing Date;

(iv) a certificate, dated as of such Third Closing Date, duly executed, and delivered by an officer of the Company and each Subsidiary certifying the resolutions of the Company's and each Subsidiary's Board of Directors, manager or others performing similar functions with respect to the Company and each Subsidiary, then in full force and effect authorizing, all aspects of the transactions contemplated hereby and the execution, delivery and performance by the Company and each Subsidiary of each Transaction Document to be delivered to which the Company and each Subsidiary is a party, as applicable, and the transactions contemplated hereby and thereby;

(v) an opinion of counsel to the Company;

(vi) all information regarding any Action against the Company, its Subsidiaries and any of its Affiliates thereof, including but not limited to any settlements, inquiries or subpoenas, since the prior Closing Date; and

(vii) such other approvals, opinions of counsel to the Company, or documents as the Purchasers may reasonably request.

(b) Purchasers Third Closing Deliveries. On or prior to the Third Closing Date, the Purchasers shall deliver or cause to be delivered to the Company the Purchasers' Third Closing Subscription Amount minus applicable legal fees and expenses of the Purchasers to be reimbursed to the Purchasers pursuant to Section 6.2, by wire transfer to the Escrow Agent to the account specified in Schedule 2.1(c) hereto.

2.5 Fourth Closing Deliveries.

(a) Company Fourth Closing Deliveries. On or prior to the Fourth Closing Date, the Company shall deliver or cause to be delivered to the Purchasers the following, in form and substance satisfactory to the Purchasers:

(i) a Debenture in the original principal amount of the Fourth Closing Principal Amount duly executed by the Company, registered in the name of the Purchasers;

(ii) a Warrant duly executed by the Company, registered in the name of the Purchasers;

(iii) certificates of appropriate officials as to the existence and good standing (or similar documents applicable for such jurisdictions) of the Company and the Subsidiaries, dated as of a date reasonably close to the Fourth Closing Date;

(iv) a certificate, dated as of such Fourth Closing Date, duly executed, and delivered by an officer of the Company and each Subsidiary certifying the resolutions of the Company's and each Subsidiary's Board of Directors, manager or others performing similar functions with respect to the Company and each Subsidiary, then in full force and effect authorizing, all aspects of the transactions contemplated hereby and the execution, delivery and performance by the Company and each Subsidiary of each Transaction Document to be delivered to which the Company and each Subsidiary is a party, as applicable, and the transactions contemplated hereby and thereby;

(v) an opinion of counsel to the Company;

(vi) all information regarding any Action against the Company, its Subsidiaries and any of its Affiliates thereof, including but not limited to any settlements, inquiries or subpoenas, since the prior Closing Date; and

(vii) such other approvals, opinions of counsel to the Company, or documents as the Purchasers may reasonably request.

(b) Purchasers Fourth Closing Deliveries. On or prior to the Fourth Closing Date, the Purchasers shall deliver or cause to be delivered to the Company the Purchasers' Fourth Closing Subscription Amount minus applicable legal fees and expenses of the Purchasers to be reimbursed to the Purchasers pursuant to Section 6.2, by wire transfer to the Escrow Agent to the account specified in Schedule 2.1(c) hereto.

2.6 Fifth Closing Deliveries.

(a) Company Fourth Closing Deliveries. On or prior to the Fifth Closing Date, the Company shall deliver or cause to be delivered to the Purchasers the following, in form and substance satisfactory to the Purchasers:

(i) a Debenture in the original principal amount of the Fifth Closing Principal Amount duly executed by the Company, registered in the name of the Purchasers;

(ii) a Warrant duly executed by the Company, registered in the name of the Purchasers;

(iii) certificates of appropriate officials as to the existence and good standing (or similar documents applicable for such jurisdictions) of the Company and the Subsidiaries, dated as of a date reasonably close to the Fifth Closing Date;

(iv) a certificate, dated as of such Fifth Closing Date, duly executed, and delivered by an officer of the Company and each Subsidiary certifying the resolutions of the Company's and each Subsidiary's Board of Directors, manager or others performing similar functions with respect to the Company and each Subsidiary, then in full force and effect authorizing, all aspects of the transactions contemplated hereby and the execution, delivery and performance by the Company and each Subsidiary of each Transaction Document to be delivered to which the Company and each Subsidiary is a party, as applicable, and the transactions contemplated hereby and thereby;

(v) an opinion of counsel to the Company;

(vi) all information regarding any Action against the Company, its Subsidiaries and any of its Affiliates thereof, including but not limited to any settlements, inquiries or subpoenas, since the prior Closing Date; and

(vii) such other approvals, opinions of counsel to the Company, or documents as the Purchasers may reasonably request.

(b) Purchasers Fifth Closing Deliveries. On or prior to the Fifth Closing Date, the Purchasers shall deliver or cause to be delivered to the Company the Purchasers' Fourth Closing Subscription Amount minus applicable legal fees and expenses of the Purchasers to be reimbursed to the Purchasers pursuant to Section 6.2, by wire transfer to the Escrow Agent to the account specified in Schedule 2.1(c) hereto.

ARTICLE III. CLOSING CONDITIONS

3.1 Conditions Precedent to First Closing.

(a) Conditions to the Purchasers' Obligation. The obligation of the Purchasers to consummate the any Closing is subject to the satisfaction on or before the applicable Closing Date of each of the following conditions, any of which may be waived in writing by the Purchasers in its sole discretion:

(i) each of the representations and warranties of the Company, contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality, a Material Adverse Effect in each case, both when made and on the First Closing Date with the same force and effect as though such representations and warranties had been made on and as of such First Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Company required to be performed hereunder at or prior to the First Closing Date shall have been performed;

(iii) the Company shall have delivered or caused to be delivered each of the items set forth in Section 2.2(a);

(iv) there shall have been no Material Adverse Effect since the date hereof;

(v) the Purchasers shall have received a certificate of an officer of the Company, dated as of the First Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (i), (ii), (iii) and (iv) above;

(vi) the Purchasers shall have received confirmation satisfactory to it that all approvals of Governmental Authorities and other approvals for the transactions contemplated herein have been obtained, and all waiting periods, if applicable, have expired;

(vii) at any time following the execution of this Agreement, none of the Company nor any of Subsidiaries shall have issued, or agreed to issue, any equity, equity linked or debt financing other than an Exempt Issuance or as specifically referenced herein without the prior written consent of the Purchasers;

(viii) the Common Stock shall have been listed for trading on Nasdaq, and the Company shall maintain the listing of the Common Stock on Nasdaq;

(ix) other than Permitted Liens, there shall be no Lien encumbering any property or assets of the Company or any Subsidiary; and

(x) the Purchasers shall complete and be satisfied with their review of all due diligence; and the Purchasers' investment committee shall have approved the terms of this Agreement and the Transaction Documents.

(b) Conditions to the Company's Obligation. The obligation of the Company to consummate the any Closing is subject to the satisfaction on or before the applicable Closing Date of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion,:

(i) each of the representations and warranties of the Purchasers contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality or any similar qualifier, in all respects) when made and on the First Closing Date with the same force and effect as though such representations and warranties had been made on and as of such First Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Purchasers hereunder required to be performed at or prior to the First Closing Date shall have been performed; and

(iii) the Purchasers shall have delivered or caused to be delivered each of the items set forth in Section 2.2(b).

3.2 Conditions Precedent to Second Closing.

(a) Conditions to the Purchasers' Obligation. The obligation of the Purchasers to consummate the second Closing is subject to the satisfaction on or before the Second Closing Date of each of the following conditions, any of which may be waived in writing by the Purchasers in their sole discretion:

(i) each of the representations and warranties of the Company, contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality, a Material Adverse, in all respects) in each case, both when made and on the Second Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Second Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Company required to be performed hereunder at or prior to the Second Closing Date shall have been performed;

(iii) the Company shall have delivered or caused to be delivered each of the items set forth in Section 2.3(a);

(iv) there shall have been no Material Adverse Effect since the date hereof;

(v) no Event of Default (as such term is defined in the Debentures) shall have occurred or be continuing;

(vi) the Purchasers shall have received a certificate of an officer of the Company, dated as of the Second Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (i), (ii), (iii), (iv), and (v) above; and

(vii) from the date hereof to the Second Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market and, at any time prior to the Second Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of the Purchasers, makes it impracticable or inadvisable to purchase the Securities at the Second Closing Date.

(b) Conditions to the Company's Obligation. The obligation of the Company to consummate the second Closing is subject to the satisfaction on or before the Second Closing Date of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion:

(i) each of the representations and warranties of the Purchasers contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality or any similar qualifier, in all respects) when made and on the Second Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Second Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Purchasers hereunder required to be performed at or prior to the Second Closing Date shall have been performed; and

(iii) the Purchasers shall have delivered or caused to be delivered each of the items set forth in Section 2.3(b).

3.3 Conditions Precedent to Third Closing.

(a) Conditions to the Purchasers' Obligation. The obligation of the Purchasers to consummate the third Closing is subject to the satisfaction on or before the Third Closing Date of each of the following conditions, any of which may be waived in writing by the Purchasers in their sole discretion:

(i) each of the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality, a Material Adverse Effect, in all respects) in each case, both when made and on the Third Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Third Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Company required to be performed hereunder at or prior to the Third Closing Date shall have been performed;

(iii) the Company shall have delivered or caused to be delivered each of the items set forth in Section 2.4(a);

(iv) there shall have been no Material Adverse Effect since the date hereof;

(v) no Event of Default (as such term is defined in the Debentures) shall have occurred or be continuing;

(vi) the Purchasers shall have received a certificate of an officer of the Company, dated as of the Third Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (i), (ii), (iii), (iv), and (v) above; and

(vii) from the date hereof to the Third Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market and, at any time prior to the Third Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of the Purchasers, makes it impracticable or inadvisable to purchase the Securities at the Third Closing Date.

(b) Conditions to the Company's Obligation. The obligation of the Company to consummate the third Closing is subject to the satisfaction on or before the Third Closing Date of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion:

(i) each of the representations and warranties of the Purchasers contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality or any similar qualifier, in all respects) when made and on the Third Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Third Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Purchasers hereunder required to be performed at or prior to the Third Closing Date shall have been performed; and

(iii) the Purchasers shall have delivered or caused to be delivered each of the items set forth in Section 2.4(b).

3.4Conditions Precedent to Fourth Closing.

(a) Conditions to the Purchasers' Obligation. The obligation of the Purchasers to consummate the fourth Closing is subject to the satisfaction on or before the Fourth Closing Date of each of the following conditions, any of which may be waived in writing by the Purchasers in their sole discretion:

(i) each of the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality, a Material Adverse Effect, in all respects) in each case, both when made and on the Fourth Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Fourth Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Company required to be performed hereunder at or prior to the Fourth Closing Date shall have been performed;

(iii) the Company shall have delivered or caused to be delivered each of the items set forth in Section 2.5(a);

(iv) there shall have been no Material Adverse Effect since the date hereof;

(v) no Event of Default (as such term is defined in the Debentures) shall have occurred or be continuing;

(vi) the Purchasers shall have received a certificate of an officer of the Company, dated as of the Fourth Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (i), (ii), (iii), (iv), and (v) above; and

(vii) from the date hereof to the Fourth Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market and, at any time prior to the Fourth Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of the Purchasers, makes it impracticable or inadvisable to purchase the Securities at the Fourth Closing Date.

(b) Conditions to the Company's Obligation. The obligation of the Company to consummate the third Closing is subject to the satisfaction on or before the Fourth Closing Date of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion:

(i) each of the representations and warranties of the Purchasers contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality or any similar qualifier, in all respects) when made and on the Fourth Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Fourth Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Purchasers hereunder required to be performed at or prior to the Fourth Closing Date shall have been performed; and

(iii) the Purchasers shall have delivered or caused to be delivered each of the items set forth in Section 2.5(b).

3.5 Conditions Precedent to Fifth Closing.

(a) Conditions to the Purchasers' Obligation. The obligation of the Purchasers to consummate the fifth Closing is subject to the satisfaction on or before the Fifth Closing Date of each of the following conditions, any of which may be waived in writing by the Purchasers in their sole discretion:

(i) each of the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality, a Material Adverse Effect, in all respects) in each case, both when made and on the Fourth Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Fifth Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Company required to be performed hereunder at or prior to the Fifth Closing Date shall have been performed;

(iii) the Company shall have delivered or caused to be delivered each of the items set forth in Section 2.6(a);

(iv) there shall have been no Material Adverse Effect since the date hereof;

(v) no Event of Default (as such term is defined in the Debentures) shall have occurred or be continuing;

(vi) the Purchasers shall have received a certificate of an officer of the Company, dated as of the Fifth Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (i), (ii), (iii), (iv), and (v) above; and

(vii) from the date hereof to the Fourth Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market and, at any time prior to the Fifth Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of the Purchasers, makes it impracticable or inadvisable to purchase the Securities at the Fifth Closing Date.

(b) Conditions to the Company's Obligation. The obligation of the Company to consummate the third Closing is subject to the satisfaction on or before the Fifth Closing Date of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion:

(i) each of the representations and warranties of the Purchasers contained in this Agreement shall be true and correct in all material respects (or, to the extent any representation or warranty is qualified by materiality or any similar qualifier, in all respects) when made and on the Fifth Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Fifth Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(ii) all obligations, covenants and agreements of the Purchasers hereunder required to be performed at or prior to the Fifth Closing Date shall have been performed; and

(iii) the Purchasers shall have delivered or caused to be delivered each of the items set forth in Section 2.6(b).

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Company. To induce Purchasers to purchase the Securities, the Company hereby represents and warrants to Purchasers and agrees with Purchasers, as of the date hereof and as of the applicable Closing Date, as follows:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company as of the date hereof are set forth on Schedule 4.1(a). Except as set forth on Schedule 4.1(a), the Company owns, directly or indirectly, all of the capital shares or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding capital shares of each Subsidiary are validly issued and are fully paid, non- assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's or Subsidiaries' ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company and each Subsidiary has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents to which the Company and/or such Subsidiary is a party, as applicable, and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and each Subsidiary party thereto, as applicable, and the consummation by the Company and/or each such Subsidiary of the transactions contemplated hereby and thereby, as applicable, have been duly authorized by all necessary action on the part of the Company and/or each such Subsidiary, as applicable, and no further action is required by the Company, the Company's Board of Directors or the Company's shareholders or any Subsidiary, any Subsidiary's board of managers or others performing similar functions with respect to such Subsidiary, or any Subsidiary's shareholders, herewith or therewith, other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which the Company and/or any Subsidiary is a party has been (or upon delivery will have been) duly executed by the Company and any Subsidiary party thereto, as applicable, and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company and each such Subsidiary, enforceable against the Company and each such Subsidiary in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law (the "Remedies Exceptions").

(d) No Conflicts. Except as set forth in Schedule 4.1(d), the execution, delivery and performance by the Company and each Subsidiary of this Agreement and the other Transaction Documents to which the Company and/or any such Subsidiary is a party, as applicable, the issuance and sale of the Securities and the consummation by the Company and each such Subsidiary of the transactions contemplated hereby and thereby, as applicable, do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's Organizational Documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or Governmental Authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. Except as disclosed on Schedule 4.1(e), neither the Company nor any Subsidiary is required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other Governmental Authority or other Person in connection with the execution, delivery and performance by the Company and/or any such Subsidiary of the Transaction Documents, other than: (i) the filings required pursuant to Section 5.6, (ii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Underlying Shares for trading thereon in the time and manner required thereby, (iii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws, (iv) such filings as are required to perfect the security interest in the collateral granted to the Purchasers pursuant to the Security Documents and (v) Shareholder Approval (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. On the date of this Agreement, the Company has reserved from its duly authorized capital shares a number of shares of Common Stock for issuance of the Underlying Shares equal to or greater than the Required Minimum.

(g) Capitalization. The capitalization of the Company as of the date hereof is as set forth on Schedule 4.1(g), which Schedule 4.1(g) includes (i) the number and type of all securities of the Company issued and outstanding, including without limitation the number of shares of Common Stock and other classes of capital shares of the Company issued and outstanding, the number and type of all securities of the Company convertible or exercisable into, or exchangeable or redeemable for, Common Stock, and for any such securities, the number of shares of Common Stock into which such securities are currently convertible, exercisable, exchangeable or redeemable, as applicable and (ii) the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents, except as disclosed on Schedule 4.1(g)(i), and to the extent any Person is listed in Schedule 4.1(g)(i), such Schedule 4.1(g)(i) includes a description of the security or other instrument or agreement pursuant to which such person holds such a right. Except as a result of the purchase and sale of the Securities and as disclosed in Schedule 4.1(g) (ii), there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any Common Stock or the share capital of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or share capital of any Subsidiary (collectively "Convertible Securities"), which Schedule 4.1(g)(ii) includes for any such Convertible Securities, the number and type of such Convertible Securities issued and outstanding, and the number of shares of Common Stock or Common Stock Equivalents into or for which such Convertible Securities are currently convertible, exercisable or exchangeable, as applicable, the conversion price or exercise price of such Convertible Securities, as applicable, the maturity or exercise period of such Convertible Securities, as applicable, and the current holder of such Convertible Securities. Except as set forth on Schedule 4.1(g)(iii), the issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue Common Stock or other securities to any Person (other than the Purchasers). Except as a result of the purchase and sale of the Securities and as disclosed in Schedule 4.1(g)(iv), there are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. Except as a result of the purchase and sale of the Securities and as disclosed in Schedule 4.1(g)(v), there are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings, or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any share appreciation rights or "phantom share" plans or agreements or any similar plan or agreement. All of the outstanding capital shares of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any shareholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no shareholders' agreements, voting agreements or other similar agreements with respect to the Company's capital shares to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's shareholders.

(h) SEC Reports. The Company has filed all SEC Reports for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) on a timely basis. The Company's SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the Company's SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the Company's SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Except as disclosed on Schedule 4.1(i), since the date of the latest audited financial statements included within the Company's SEC Reports, (i) there has been no event, occurrence or development that has had or that would reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its shareholders or purchased, redeemed or made any agreements to purchase or redeem any capital shares, and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company share option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth in Schedule 4.1(i), no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least one (1) Trading Day prior to the date that this representation is made.

(j) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) would, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any such Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company or any Subsidiary, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other Governmental Authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any Governmental Authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all applicable Environmental Laws; (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the Company's SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. Except as disclosed on Schedule 4.1(o) hereto, the Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries; and (ii) Liens for the payment of federal, state, foreign or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance in all material respects

(p) Intellectual Property. The Company and the Subsidiaries to their knowledge, have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the Company's SEC Reports and which the failure to so have could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Except as set forth on Schedule 4.1(p),neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the Company's SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, except as set forth on Schedule 4.1(p),all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality, and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the Aggregate Subscription Amount.

(r) Transactions with Affiliates and Employees. Except as set forth on Schedule 4.1(r), none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, shareholder, member or partner, other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including share option agreements under any share option plan of the Company.

(s) Sarbanes-Oxley; Internal Accounting Controls. Except as disclosed in the Company's SEC Reports, the Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the applicable Closing Date. Except as disclosed in the Company's SEC Reports, the Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with 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 action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(t) Certain Fees. Except as set forth on Schedule 4.1(t), no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 4.1(t) that may be due in connection with the transactions contemplated by the Transaction Documents.

(u) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 4.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(v) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(w) Registration Rights. Other than the Purchasers pursuant to the Registration Rights Agreement, and as set forth on Schedule 4.1(w), no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(x) Listing and Maintenance Requirements. The Common Stock is expected to be registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company is applying for listing of the Common Stock on Nasdaq and except as set forth on Schedule 4.1(x) has not received notice from any Trading Market on which the Common Stock is or have been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Common Stock is expected to be eligible for electronic transfer through the Depository Trust Company, or another established clearing corporation, and the Company will remain current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(y) Application of Takeover Protections. The Company and the Company's Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Organizational Documents or the laws of its country of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(z) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Transaction Documents and disclosure schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that the Purchasers do not make or have not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 4.2 hereof.

(aa) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 4.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) subject to receipt of Shareholder Approval, any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(bb) Solvency; Indebtedness. Based on the consolidated financial condition of the Company as of the applicable Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, the Company will have sufficient cash to operate its business as currently operated for a period of 12 months from the applicable Closing Date. The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the applicable Closing Date. Schedule 4.1(bb) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business and (z) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP.

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

(dd) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising (within the meaning of Regulation D of the Securities Act). The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(ee) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ff) Acknowledgment Regarding a Purchaser's Purchase of Securities. The Company acknowledges and agrees that each Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by a Purchaser or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchaser's purchase of the Securities. The Company further represents to the each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(gg) Acknowledgment Regarding Purchasers' Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Section 5.13 hereof), it is understood and acknowledged by the Company that: (i) the Purchasers have not been asked by the Company to agree, nor have the Purchasers agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by the Purchasers, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) the Purchasers, and counter-parties in "derivative" transactions to which the Purchasers are a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) the Purchasers shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) the Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing shareholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such hedging activities do not constitute a breach of any of the Transaction Documents.

(hh) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(ii) Share Option Plans. Each share option granted by the Company under the Company's share option plan then in effect was granted (i) in accordance with the terms of the Company's share option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such share option would be considered granted under GAAP and applicable law. No share option granted under the Company's share option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, share options prior to, or otherwise knowingly coordinate the grant of share options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(jj) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(kk) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(ll) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(mm) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506(b) under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(nn) Other Covered Persons. The Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of Purchasers in connection with the sale of any Securities.

(oo) Notice of Disqualification Events. The Company will notify the Purchasers in writing, prior to the applicable Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

(pp) No Side Letters. Neither the Company nor any Affiliates of the Company have entered into any side letter or similar agreement with any Person in connection with the issuance or transfer of securities to such Person in connection with a direct or indirect investment in the Company, including but not limited to the transfer or assignment of "founder shares" to such Person.

4.2 Representations and Warranties of the Purchasers. To induce the Company to issue the Securities, each Purchaser hereby represents and warrants to the Company and acknowledge and agree with the Company, as of the date hereof and as of the applicable Closing Date (unless as of a specific date therein, in which case they shall be accurate as of such date), as follows:

(a) Organization; Authority. Such Purchaser is an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against them in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to an effective Registration Statement covering the resale of such Securities or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchasers Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof they are, and on each date on which it exercises any Warrants or converts any Debentures it will be an "accredited investor" as defined in Rule 501(a)(1) under the Securities Act.

(d) Experience of the Purchasers. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication, and experience in business and financial matters to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser can bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. Such Purchasers is not, to such Purchaser's knowledge, purchasing the Securities because of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the knowledge of such Purchaser, any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the Company's SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities, (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment and (iii) the opportunity to obtain such additional information that of the Company possess or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(g) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, the Purchaser has not, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that the Purchasers first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Notwithstanding the foregoing, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement or to such Purchaser's representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates, such Purchaser has maintained the confidentiality of all disclosures made to them in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company for such Purchaser (or its broker or other financial representative) to effect Short Sales or similar transactions in the future.

The Company acknowledges and agrees that the representations contained in this Section 4.2 shall not modify, amend or affect a Purchaser's rights to rely on the Company's, representations and warranties contained in this Agreement, as applicable, or any representations and warranties contained in any other Transaction Document, or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to locating or borrowing shares to effect Short Sales or similar transactions in the future.

ARTICLE V.
OTHER AGREEMENTS OF THE PARTIES

5.1 Transfer Restrictions

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 5.1(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, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Registration Rights Agreement and shall have the rights and obligations of the Purchasers under this Agreement and the Registration Rights Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 5.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [EXERCISABLE] [CONVERTIBLE]] HAS [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. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [EXERCISE] [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER- DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that the Purchasers may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, the Purchasers may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate the Purchasers' expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities have been registered for resale pursuant to a Registration Statement, the preparation and filing of any required prospectus supplement under Rule 424(b) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling shareholders thereunder.

(c) Certificates evidencing the Underlying Shares shall not contain any legend (including the legend set forth in Section 5.1(b) hereof): (i) while a registration statement (including any Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144 (assuming cashless exercise of the Warrants), or (iii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall, at its expense, cause its counsel, or at the option of the Purchasers, counsel determined by the Purchasers, to issue a legal opinion to the Transfer Agent or the Purchasers promptly if required by the Transfer Agent to effect the removal of the legend hereunder, or if requested by the Purchasers, respectively subject to compliance with the holding period requirements of Rule 144 (for the avoidance of doubt, the Company shall pay all costs associated with such opinions). If all or any portion of a Debenture is converted or Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 without a requirement of current public information or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that at such time as such legend is no longer required under this Section 5.1(c), it will, no later than the earlier of (A) two (2) Trading Days and (B) the number of Trading Days comprising the Standard Settlement Period (as defined below) following the delivery by the Purchasers to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such date, the "Legend Removal Date"), deliver or cause to be delivered to the Purchasers a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Article V. Certificates for Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchasers by crediting the account of the Purchasers' prime broker with the Depository Trust Company System as directed by the Purchasers. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend. In addition to the Purchasers' other available remedies, the Company shall pay to the Purchasers, in cash, as partial liquidated damages and not as a penalty, 2% of the total of the value of the Underlying Shares for which the removal of the legend is sought (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) for each full month that said opinion is not delivered after the Legend Removal Date until such certificate is delivered without a legend.

(d) In addition to the Purchasers' other available remedies, the Company shall pay to the Purchasers, in cash, (i) as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 5.1(c), $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend and (ii) if the Company fails to (a) issue and deliver (or cause to be delivered) to the Purchasers by the Legend Removal Date a certificate representing the Securities so delivered to the Company by the Purchasers that is free from all restrictive and other legends and (b) if after the Legend Removal Date the Purchasers purchase (in an open market transaction or otherwise) Common Stock to deliver in satisfaction of a sale by the Purchasers of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that the Purchasers anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of such the Purchasers' total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "Buy-In Price") over the product of (A) such number of Underlying Shares that the Company was required to deliver to the Purchasers by the Legend Removal Date multiplied by (B) the average of the closing sale prices of the Common Stock on any Trading Day during the period commencing on the date of the delivery by the Purchasers to the Company of the applicable Underlying Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).

(e) The Purchasers agree with the Company that the Purchasers will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 5.1 is predicated upon the Company's reliance upon this understanding.

5.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against the Purchasers and regardless of the dilutive effect that such issuance may have on the ownership of the other shareholders of the Company.

5.3 Furnishing of Information; Public Information.

(a) Until the time that the Purchasers do not own any Securities, the Company covenants to use reasonable efforts to maintain the registration of the Common Stock under Sections 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act except in the case of a sale of all or substantially all of the assets of the Company, a merger or reorganization of the Company with one or more other entities in which the Company is not the surviving entity or any transaction or series of related transactions as a result of which any Person (together with its Affiliates) acquires then outstanding securities of the Company representing more than fifty percent (50%) of the voting control of the Company.

(b) At any time during the period commencing from the six (6) month anniversary of the date hereof and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has ever been an issuer described in Rule 144(i)(1)(i) or becomes an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "Public Information Failure") then, in addition to the Purchasers' other available remedies, the Company shall pay to the Purchasers, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the Aggregate Subscription Amount of the Purchasers' Securities on the day of a Public Information Failure and on every thirtieth (30th) day (prorated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Underlying Shares pursuant to Rule 144, provided that such liquidated damages shall not exceed in the aggregate to ten percent (10.0%) of the Purchasers' Aggregate Subscription Amount. The payments to which the Purchasers shall be entitled pursuant to this Section 5.3(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit the Purchasers' right to pursue actual damages for the Public Information Failure, and the Purchasers shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

5.4 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 Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

5.5 Conversion and Exercise Procedures. Each of the form of "Notice of Exercise" included in the Warrants and the form of "Notice of Conversion" included in the Debentures set forth the totality of the procedures required of the Purchasers to exercise the Warrants or convert the Debentures, respectively. Without limiting the preceding sentences, no ink-original Notice of Exercise or Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise or Notice of Conversion form be required to exercise the Warrants or convert the Debentures. No additional legal opinion, other information or instructions shall be required of the Purchasers to exercise their Warrants or convert their Debentures. The Company shall honor exercises of the Warrants and conversions of the Debentures and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

5.6 Securities Laws Disclosure; Publicity. (a) The Company shall by the Disclosure Time, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) the Company shall file a Current Report on Form 8-K, including the Transaction Documents, and other material agreements entered into in connection therewith as exhibits thereto, with the Commission within the time required by the Exchange Act. From and after the issuance of such press release, the Company represents to the Purchasers that it shall have caused to have publicly disclosed all material, non-public information with respect to the Company delivered to the Purchasers by the Company or any of the Subsidiaries, or any of their respective officers, directors, employees, or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of such press release, the Parties acknowledge and agree that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company or any of the Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and the Purchasers or any of their Affiliates on the other hand, shall terminate. The Company and the Purchasers shall consult with each other in issuing any other press releases with respect to the Transactions contemplated hereby, and none of the Parties shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of the Purchasers, or without the prior consent of the Purchasers, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, 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 the Purchasers, or include the name of the Purchasers in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of the Purchasers, except (a) as required by federal securities law in connection with the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b).

5.7 Shareholder Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that the Purchasers are "Acquiring Persons" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that the Purchasers could be deemed to trigger the provisions of any Rights such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

5.8 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Document, which shall be disclosed pursuant to Section 5.6, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide the Purchasers or their agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto the Purchasers shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that the Purchasers shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company, or any of the Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates delivers any material, non-public information to the Purchasers without the Purchasers' consent, the Company hereby covenants and agrees that the Purchasers shall not have any duty of confidentiality to the Company or any of the Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, or any of the Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchasers shall remain subject to applicable law. To the extent that any notice delivered or received by the Company or any of its Subsidiaries pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Company understands and confirms that the Purchasers shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

5.9 Use of Proceeds. The Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes of the Company and the Subsidiaries and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (other than for payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any shares of Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation, (d) in violation of FCPA or OFAC regulations, (e) to lend, give credit or make advances to any officers, directors, employees or affiliates of the Company, or (f) to lend, give credit, or make advances to any person or entity, other than a Subsidiary.

5.10 Indemnification of Purchasers. Subject to the provisions of this Section 5.10, the Company will indemnify and hold the Purchasers and their partners, directors, officers, shareholders, members, employees, professional advisors, attorneys, agents and any Affiliate thereof (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) (each, and "Indemnified Person") harmless from and against any and all losses, claims, damages, expenses, liabilities, obligations, contingencies, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Indemnified Person may suffer or incur as a result of or relating to (a) 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 (b) any action instituted against the Indemnified Persons in any capacity, or any of them or their respective Affiliates, by any shareholder of the Company who is not an Affiliate of such Indemnified Person, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon a material breach of such Indemnified Person's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Indemnified Person may have with any such shareholder or any violations by such Indemnified Person of state or federal securities laws or any conduct by such Indemnified Person which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). If any action shall be brought against any Indemnified Person in respect of which indemnity may be sought pursuant to this Agreement, such Indemnified Person 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 reasonably acceptable to the Indemnified Person. Any Indemnified Person 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 such Indemnified Person 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 counsel, a material conflict on any material issue between the position of the Company and the position of such Indemnified Person, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Indemnified Person under this Agreement (y) for any settlement by an Indemnified Person effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Indemnified Person's breach of any of the representations, warranties, covenants or agreements made by such Indemnified Person in this Agreement or in the other Transaction Documents. The indemnification required by this Section 5.10 shall be made by periodic payments of the amount thereof during the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Indemnified Person against the Company or others and any liabilities the Company may be subject to pursuant to law.

5.11 Reservation and Listing of Securities; Shareholder Approval.

(a) The Company shall at all times maintain a reserve of the Required Minimum from its duly authorized Common Stock for issuance pursuant to the Transaction Documents in such amounts as may then be required to fulfill its obligations in full under the Transaction Documents. If, on any date, the number of authorized but unissued (and otherwise unreserved) Common Stock is less than the Required Minimum on such date (a "Required Minimum Failure"), then, in addition to the Purchasers' other available remedies, the Company shall pay to the Purchasers, in cash, as partial liquidated damages and not as a penalty, an amount in cash equal to one percent (1.0%) of the Aggregate Subscription Amount of the Purchasers' Securities on the day of a Required Minimum Failure and on every thirtieth (30th) day (prorated for periods totaling less than thirty days) thereafter until the date such Required Minimum Failure is cured; provided that such liquidated damages shall not exceed in the aggregate to twelve percent (12.0%) of the Purchasers' Aggregate Subscription Amount. The payments to which the Purchasers shall be entitled pursuant to this Section 5.11(a) are referred to herein as "Required Minimum Failure Payments." Required Minimum Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Required Minimum Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Required Minimum Failure is cured. In the event the Company fails to make Required Minimum Failure Payments in a timely manner, such Required Minimum Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit the Purchasers' right to pursue actual damages for the Required Minimum Failure, and the Purchasers shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

(b) Upon the occurrence of a Required Minimum Failure, the Company's Board of Directors shall use commercially reasonable efforts to amend the Company's memorandum and articles of association to increase the number of authorized but unissued Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 75th day after the first date on which such Required Minimum Reservation Failure occurred.

(c) The Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchasers evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees to use reasonable efforts to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

(d) The Company shall hold a meeting of shareholders at the earliest practicable date after the date hereof, unless held earlier, for the purpose of obtaining Shareholder Approval, with the recommendation of the Company's Board of Directors that such proposal be approved, and the Company shall solicit proxies from its shareholders in connection therewith in the same manner as all other management proposals in such proxy statement and all management-appointed proxyholders shall vote their proxies in favor of such proposal. The Company shall use its reasonable best efforts to obtain such Shareholder Approval if not already obtained by the date hereof. Notwithstanding anything to the contrary contained herein, so long as the Common Stock is listed on the Trading Market, until such time as the Shareholder Approval is obtained the number of shares of Common Stock issued, in the aggregate, pursuant to this Agreement upon conversion of the Debentures and exercise of the Warrants and under the Arena ELOC shall be limited to the Conversion Cap.

5.12 Subsequent Equity Sales.

(a) From the (i) the First Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debenture remains outstanding and (y) 120 days after the First Registration Statement Effectiveness Date, (ii) the Second Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debenture remains outstanding and (y) 120 days after the Second Registration Statement Effectiveness Date, (iii) the Third Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debenture remains outstanding and (y) 120 days after the Third Registration Statement Effectiveness Date, (iv) the Fourth Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debenture remains outstanding and (y) 120 days after the Fourth Registration Statement Effectiveness Date, and (v) the Fifth Registration Statement Effectiveness Date until the earlier of (x) such date thereafter as no Debenture remains outstanding and (y) 120 days after the Fifth Registration Statement Effectiveness Date, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any Common Stock or Common Stock Equivalents, except as set forth in Section 5.12(c) below.

(b) From the date hereof until such time as the Purchasers do not hold any of the Debentures, the Company shall be prohibited, unless agreed to by the Purchasers, from entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company, as applicable, or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company, as applicable, may issue securities at a future determined price; provided for the avoidance of doubt, "Variable Rate Transaction" shall not include any issuance of any Securities hereunder or under any Transaction Documents and/or any issuance of securities upon the exercise, exchange of or conversion of any Securities issued hereunder, issued under any Transaction Document, or any Securities issued and outstanding as of the date hereof. The Purchasers shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(c) Notwithstanding the foregoing, this Section 5.12 shall not apply in respect of an Exempt Issuance, except that no Variable Rate Transaction shall be an Exempt Issuance except for the Arena ELOC.

5.13 Certain Transactions and Confidentiality. The Purchasers covenant that neither they, nor any Affiliate acting on their behalf or pursuant to any understanding with them will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 5.6. The Purchasers covenant that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 5.6, the Purchasers will maintain the confidentiality of the existence and terms of this transaction and the information included in the Disclosure Schedules. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (a) the Purchasers do not make any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 5.6, (b) the Purchasers shall not be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 5.6 and (c) the Purchasers shall not have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 5.6. Notwithstanding the foregoing, in the case that the Purchasers are multi-managed investment vehicles whereby separate portfolio managers manage separate portions of the Purchasers' assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of the Purchasers' assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

5.14 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of the Purchasers. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or Blue Sky Laws of the states of the United States and shall provide evidence of such actions promptly upon request of the Purchasers.

5.15 Reserved.

5.16 Participation in Future Financings.

(a) From the date hereof until the first (1st) anniversary of the First Closing Date, upon any issuance by the Company of Common Stock or Common Stock Equivalents for consideration (a "Subsequent Financing"), the Purchasers shall have the right to participate in any such Subsequent Financing in an amount equal to 15% of the amount of the Subsequent Financing (the "Participation Maximum") on the same terms, conditions and price provided for in the Subsequent Financing. If accepted by a Purchaser, it shall be afforded the opportunity to purchase its Pro Rata Portion (as defined below). The Purchasers shall be entitled to apportion the right of first offer hereby granted to them in such proportions as they deem appropriate among themselves and their Affiliates.

(b) Not later than the sixth (6th) Trading Day prior to the Trading Day of the expected announcement of the Subsequent Financing, the Company shall deliver to the Purchasers a written notice of the Company's intention to effect a Subsequent Financing (a "Subsequent Financing Notice"), which notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet and transaction documents relating thereto as an attachment.

(c) If the Purchasers desire to participate in such Subsequent Financing, the Purchasers must provide written notice to the Company by no later than 6:30 am (New York City time) on the Trading Day that is two (2) Trading Days following date on which the Subsequent Financing Notice is delivered to the Purchasers (the "Notice Termination Time") that the Purchasers are willing to participate in the Subsequent Financing, the amount of the Purchasers' participation up to their Pro Rata Portion of the Participation Maximum, and representing and warranting that the Purchasers have such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. "Pro Rata Portion" means the ratio of (x) the initial principal amount of all Debentures purchased by a Purchaser under this Agreement participating under this Section 5.16 and (y) the aggregate principal amount of the Debentures Securities purchased at all Closings by the Purchasers participating under this Section 5.16. If the Company receives no such notice from the Purchasers as of such Notice Termination Time, the Purchasers shall be deemed to have notified the Company that it does not elect to participate in such Subsequent Financing.

(d) If, by the Notice Termination Time, the aggregate desired participation amount indicated by the Purchasers from whom the Company has received responses to a Subsequent Financing Notice is less than the total proposed amount of the applicable Subsequent Financing, then the Company may effect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) The Company must provide the Purchasers with a second Subsequent Financing Notice, and the Purchasers will again have the right of participation set forth above in this Section 5.16, if the definitive agreement related to the initial Subsequent Financing Notice is not entered into for any reason on the terms set forth in such Subsequent Financing Notice within two (2) Trading Days after the date of delivery of the initial Subsequent Financing Notice.

(f) Notwithstanding the foregoing, (i) this Section 5.16 shall not apply in respect of an Exempt Issuance and (ii) in the event of an all Common Stock intra-day or overnight financing, the Company shall provide Purchasers as soon as possible with a Subsequent Financing Notice, and Purchasers shall thereupon have two and one-half (2.5) hours to respond to the Subsequent Financing Notice in respect of an intra-day financing and four (4) hours to respond in the event of an overnight financing. Purchasers' failure to respond to a Subsequent Financing Notice within such periods shall be deemed to be a waiver of Purchasers' rights hereunder to participate in the Subsequent Financing described therein provided that the Purchasers shall have actually received such Subsequent Financing Notice.

5.17 Purchasers' Exercise/Conversion Limitation upon Reserved Shares Deficit. Notwithstanding anything to the contrary set forth herein or in any Transaction Document, if at any time, the number of shares of Common Stock reserved for issuance by the Company in order to fulfill its obligations under the Transaction Documents (the "Reserved Shares") is less than the aggregate number of shares then issuable upon the exercise and conversion in full of all then outstanding Debentures and Warrants (a "Reserved Shares Deficit"), the Company and the Purchasers agrees that the Purchasers shall not be entitled to exercise or convert Debentures or Warrants for a number of shares of Common Stock greater than the Purchasers' Aggregate Subscription Amount of the Reserved Shares until such time as the number of Reserved Shares is equal to or greater than the aggregate number of shares then issuable upon the exercise and conversion in full of all then outstanding Debentures and Warrants. Within one (1) day of the occurrence of a Reserved Shares Deficit, the Company shall provide notice to the Purchasers of the number of Reserved Shares and the Reserved Shares Deficit, and within one (1) day of the cure of any Reserved Shares Deficit, the Company shall provide notice to the Purchasers of such cure.

5.18 Capital Changes. Until the eighteen (18) month anniversary of the First Closing Date, the Company shall not undertake a reverse or forward share split or reclassification of the Common Stock without the prior written consent of the Purchasers. Such consent shall not be required if such action is taken to maintain the listing of the Common Stock on Nasdaq or the New York Stock Exchange, as applicable.

5.19 Due Diligence Review. The Company shall (i) provide such information and assistance as the Purchasers may reasonably request, (ii) grant such access to the Company and its representatives as may be reasonably necessary for their due diligence, and (iii) participate in a reasonable number of meetings and due diligence sessions in order to facilitate the due diligence efforts of the Purchasers.

5.20 Non-Circumvention Agreement. The Company shall not, in any manner circumvent or attempt to circumvent the Transactions contemplated hereunder and shall not enter into direct or indirect offers, negotiations or transactions with a third party in lieu of the Transactions hereunder.

5.21 Pro Rata Payments. The Company and each Purchaser hereby agree that, notwithstanding anything to the contrary contained herein or in the Debentures, to the extent the Company is obligated to make any payments hereunder or under the Debentures to the Purchasers (or offers to make any prepayments hereunder or thereunder), all such payments shall be applied to outstanding principal amount of the Debentures held by all Purchasers on a pro rata basis based on the sum of the (a) the aggregate principal amount owing on the Debentures at such time, plus (b) the aggregate accrued and unpaid interest owing to all Purchasers on such aggregate principal amount at such time (the "Aggregate Outstanding Amount"). If any Purchaser shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of outstanding amounts under the Debentures resulting in such Purchaser receiving payment of a proportion of the Aggregate Outstanding Amount greater than its pro rata share thereof as provided herein, then the Purchaser receiving such greater proportion shall (a) notify the other Purchasers of such fact, and (b) purchase (for cash at face value) participations in the principal amount owing to the other Purchasers under the applicable Debentures, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Purchasers ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Debentures and other amounts owing them. The Company consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Purchaser acquiring a participation pursuant to the foregoing arrangement may exercise against the Company rights of setoff and counterclaim with respect to such participation as fully as if such Purchaser were a direct creditor of the Company in the amount of such participation.

ARTICLE VI.
MISCELLANEOUS

6.1 Termination.

(a) This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the Parties hereunder shall terminate without any further liability on the part of any Party in respect thereof, upon the earlier to occur of: (a) the mutual written agreement of each of the Parties hereto to terminate this Agreement; and (b) written notice by the Company to the Purchasers or by the Purchasers to the Company if the first Closing has not been consummated on or prior to the 90th calendar day after the execution of this Agreement or by the Company or Purchasers at any time after the First Closing.

(b) If the second Closing has not been consummated on or before the date that is six (6) months following the First Closing Date, this Agreement may be terminated by the Purchasers, by written notice to the Company, as to the Purchasers' obligation hereunder to consummate the second Closing only and without any effect on the obligations of the other Parties hereunder or the rights and obligations of any Party under any other Transaction Documents.

(c) If the third Closing has not been consummated on or before the date that is ten (10) months following the First Closing Date, this Agreement may be terminated by the Purchasers, by written notice to the Company, as to the Purchasers' obligation hereunder to consummate the third Closing only and without any effect on the obligations of the other Parties hereunder or the rights and obligations of any Party under any other Transaction Documents.

(d) If the fourth Closing has not been consummated on or before the date that is fourteen (14) months following the First Closing Date, this Agreement may be terminated by the Purchasers, by written notice to the Company, as to the Purchasers' obligation hereunder to consummate the fourth Closing only and without any effect on the obligations of the other Parties hereunder or the rights and obligations of any Party under any other Transaction Documents.

(e) If the fifth Closing has not been consummated on or before the date that is eighteen (18) months following the First Closing Date, this Agreement may be terminated by the Purchasers, by written notice to the Company, as to the Purchasers' obligation hereunder to consummate the fifth Closing only and without any effect on the obligations of the other Parties hereunder or the rights and obligations of any Party under any other Transaction Documents.

(f) Notwithstanding anything to the contrary set forth herein, no termination of the Agreement pursuant to Section 6.1(a), nor any termination of the Purchasers' obligation to consummate the second Closing or the third Closing pursuant to Section 6.1(b), 6.1(c), 6.1(d), or 6.1(e) as applicable, will relieve any Party from liability for any willful breach hereof prior to the time of such termination, and each Party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from such breach..

6.2 Fees and Expenses. Prior to the first Closing, the Company agrees to reimburse the Purchasers for all of their legal fees and expenses in connection with the negotiation, preparation, execution, and delivery of this Agreement up to $50,000. At the second Closing, third Closing, fourth Closing and fifth Closing the Company has agreed to reimburse the Purchasers for their legal fees and expenses in connection with the preparation, execution and delivery of the Transaction Documents to be delivered at the second Closing, third Closing, fourth Closing and fifth Closing, respectively up to $10,000. Accordingly, in lieu of the foregoing payments, the aggregate amount that the Purchasers are required to pay for the purchase of the Securities at each of the first Closing, second Closing, third Closing, fourth Closing and fifth Closing shall be reduced by the amount of any such reimbursement obligation of the Company then due. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise noticed delivered by the Purchasers), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

6.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the Parties acknowledge have been merged into such documents, exhibits and schedules.

6.4 Notices. 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 shown in a delivery confirmation report generated by the sender's email system which indicates that delivery of the email to the recipient's email address has been completed, if such notice or communication is sent via e-mail prior to 5:30 p.m. (New York City time) on any Business Day; (b) the next Business Day after the date of transmission shown in a delivery confirmation report generated by the sender's email system which indicates that delivery of the email to the recipient's email address has been completed, if such notice or communication is sent via e-mail on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day; (c) the second Business Day 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, sent to the address or email address of the applicable recipient Party set forth on the signature pages attached hereto, or as to any Party hereto, at such other address as shall be designated by such Party in a written notice to the other Parties delivered in accordance with this Section 6.4. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

6.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and Purchasers having at least 50.01% of the aggregate outstanding principal balance of the Debentures at that time, in the case of a waiver, by the Party against whom enforcement of any such waived provision 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 any party to exercise any right hereunder in any manner impair the exercise of any such right. Any amendment effected in accordance with this Section 6.5 shall be binding upon the Purchasers, any holder of Securities, and the Company.

6.6 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.

6.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The Company, may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers. The Purchasers may, without the consent of the Company, assign their rights hereunder (i) to any of their "affiliates", as that term is defined under the Exchange Act, and (ii) solely during the continuance of any Event of Default (as such term is defined in the Debentures), to any other Person, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers." The Company's prior written consent, not to be unreasonably withheld, conditioned or delayed, shall be required for the Purchasers to assign their rights hereunder to any Person that is not one of its "affiliates", as that term is defined under the Exchange Act during any period in which an Event of Default (as such term is defined in the Debentures) is not then continuing, and in addition any such transferee must agree in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers." In any event, for any successor or assignee of the Purchasers to validly assume the rights of the Purchasers hereunder, such successor or assignee must (i) be an "accredited investor" within the meaning of Rule 501 under the Securities Act and (ii) not be a direct competitor of the Company or any Subsidiary, and shall provide evidence reasonably satisfactory to the Company of the foregoing at the Company's request.

6.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the Parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 5.10.

6.9 Governing Law. 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 internal laws of the State of New York, without regard to the principles of conflicts of law thereof. 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, partners, members, 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 Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each Party hereby irrevocably waives personal service of process and consents to process being served in any such 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 other manner permitted by law.

6.10 Survival. The representations and warranties contained herein shall survive each of the respective Closings and the delivery of the Securities at each Closing.

6.11 Execution. This Agreement may be executed in two 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 each other Party, it being understood that the Parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page was an original thereof.

6.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the Parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the Parties that they would have executed the remaining terms, provisions, covenants, and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable. In addition, the Parties agree to use their commercially reasonable efforts to agree upon and substitute a valid and enforceable term, provision, covenant or restriction for any such that is held invalid, void or unenforceable by a court of competent jurisdiction.

6.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever the Purchasers exercise a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then the Purchasers may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that, in the case of a rescission of a conversion of a Debenture or exercise of a Warrant, the Purchasers shall be required to return any shares of Common Stock subject to any such rescinded conversion or exercise notice concurrently with the return to the Purchasers of the aggregate exercise price paid to the Company for such shares and the restoration of the Purchasers' right to acquire such shares pursuant to the Purchasers' Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

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

6.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The Parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

6.16 Payment Set Aside. To the extent that the Company makes a payment or payments to the Purchasers pursuant to any Transaction Document or the Purchasers enforce or exercise their 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.

6.17 Usury. To the extent it may lawfully do so, each of the Company, on behalf of itself and all of its Subsidiaries hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Action or Proceeding that may be brought by the Purchasers in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company or any Subsidiary may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action after the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest more than the Maximum Rate is paid by the Company or any Subsidiary to the Purchasers with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by the Purchasers to the unpaid principal balance of any such indebtedness or be refunded to the Company or the applicable Subsidiary, the manner of handling such excess to be at the Purchasers's election.

6.18 Liquidated Damages. The Company's and each Subsidiary's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

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

6.20 Construction. The Parties agree that each of them and/or their respective counsel have 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 thereto. In addition, each and every reference to share prices and Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward share splits, share dividends, share combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

6.21 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

(Signature Pages Follow)

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

SAFE AND GREEN DEVELOPMENT CORPORATION

By: /s/ Nicolai Brune
Name: Nicolai Brune
Title: Chief Financial Officer

Address for Notices:

Safe and Green Development Corporation
990 Biscayne Blvd
#501, Office 12
Miami, Florida 33121
Attention:
Email:

with a copy to:

Blank Rome LLP
1271 Avenue of the Americas
New York, NY 10020

[PURCHASERS SIGNATURE PAGES TO SECURITIES PURCHASE AGREEMENT]

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

Name of Purchaser: Arena Special Opportunities Partners II, LP

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: Lawrence Cutler

Title of Authorized Signatory: Authorized Signatory

Email Address of Authorized Signatory:

Facsimile Number of Authorized Signatory:

Address for Notice to Purchaser:

Arena Investors, LP
405 Lexington Avenue
59th Floor
New York, NY 10174

Address for Delivery of Securities to Purchaser (if not same as address for notice):

First Closing Subscription Amount: $525,064.18

First Closing Principal Amount: $ 583,404.59

First Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Second Closing Subscription Amount: $840,102.70

Second Closing Principal Amount: $933,447.36

Second Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Third Closing Subscription Amount: $840,102.70

Third Closing Principal Amount: $933,447.36

Third Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fourth Closing Subscription Amount: $840,102.70

Fourth Closing Principal Amount: $933,447.36

Fourth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fifth Closing Subscription Amount: $840,102.70

Fifth Closing Principal Amount: $933,447.36

Fifth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Name of Purchaser: Arena Special Opportunities (Offshore) Master, LP

Signature of Authorized Signatory of Purchaser:

Name of Authorized Signatory: Lawrence Cutler

Title of Authorized Signatory: Authorized Signatory

Email Address of Authorized Signatory:

Facsimile Number of Authorized Signatory:

Address for Notice to Purchaser:

Arena Investors, LP
405 Lexington Avenue
59th Floor
New York, NY 10174

Address for Delivery of Securities to Purchaser (if not same as address for notice):

First Closing Subscription Amount: $401,070.68

First Closing Principal Amount: $445,634.04

First Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Second Closing Subscription Amount: $641,713.08

Second Closing Principal Amount: $713,014.46

Second Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Third Closing Subscription Amount: $641,713.08

Third Closing Principal Amount: $713,014.46

Third Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fourth Closing Subscription Amount: $641,713.08

Fourth Closing Principal Amount: $713,014.46

Fourth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fifth Closing Subscription Amount: $641,713.08

Fifth Closing Principal Amount: $713,014.46

Fifth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Name of Purchaser: Arena Special Opportunities Partners III, LP

Signature of Authorized Signatory of Purchaser:

Name of Authorized Signatory: Lawrence Cutler

Title of Authorized Signatory: Authorized Signatory

Email Address of Authorized Signatory:

Facsimile Number of Authorized Signatory:

Address for Notice to Purchaser:

Arena Investors, LP
405 Lexington Avenue
59th Floor
New York, NY 10174

Address for Delivery of Securities to Purchaser (if not same as address for notice):

First Closing Subscription Amount: $222,462.30

First Closing Principal Amount: $247,180.31

First Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Second Closing Subscription Amount: $355,939.68

Second Closing Principal Amount: $395,488.49

Second Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Third Closing Subscription Amount: $355,939.68

Third Closing Principal Amount: $395,488.49

Third Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fourth Closing Subscription Amount: $355,939.68

Fourth Closing Principal Amount: $395,488.49

Fourth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fifth Closing Subscription Amount: $355,939.68

Fifth Closing Principal Amount: $395,488.49

Fifth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Name of Purchaser: Arena Special Opportunities Fund, LP

Signature of Authorized Signatory of Purchaser:

Name of Authorized Signatory: Lawrence Cutler

Title of Authorized Signatory: Authorized Signatory

Email Address of Authorized Signatory:

Facsimile Number of Authorized Signatory:

Address for Notice to Purchaser:

Arena Investors, LP
405 Lexington Avenue
59th Floor
New York, NY 10174

Address for Delivery of Securities to Purchaser (if not same as address for notice):

First Closing Subscription Amount: $101,402.84

First Closing Principal Amount: $112,669.81

First Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Second Closing Subscription Amount: $162,244.54

Second Closing Principal Amount: $180,271.69

Second Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Third Closing Subscription Amount: $162,244.54

Third Closing Principal Amount: $180,271.69

Third Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fourth Closing Subscription Amount: $162,244.54

Fourth Closing Principal Amount: $180,271.69

Fourth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Fifth Closing Subscription Amount: $162,244.54

Fifth Closing Principal Amount: $180,271.69

Fifth Closing Warrant Shares (subject to adjustment as set forth in the Warrant)

Exhibit A

Form of Debenture

Exhibit B

Form of Warrant

Exhibit C

Form of Guarantee

Exhibit D

Form of Security Agreement

Exhibit 10.2

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of August 12, 2024, by and between **SAFE AND GREEN DEVELOPMENT CORPORATION**, a Delaware corporation (the "Company"), and those certain investors identified on the signature page hereto (together with it permitted assigns, individually, each an "Investor" and collectively, the "Investors"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in that certain Securities Purchase Agreement by and between the Company and the Investors, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement").

WHEREAS:

The Company has agreed, upon the terms and subject to the conditions of the Purchase Agreement, to sell to the Investors the Securities and to induce the Investors to enter into the Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "Securities Act"), and applicable state securities laws;

Pursuant to the terms of the Purchase Agreement, the Company has agreed, among other things, to register the Underlying Shares that the Investors will receive upon conversion or exercise of the Debentures that the Investors acquired on the First Closing Date (the "First Closing Debentures") and the related Warrant issued to the Investors in accordance with the First Closing Warrant Agreement (the "First Closing Warrant").

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investors hereby agree as follows:

1. DEFINITIONS.

As used in this Agreement, the following terms shall have the following meanings:

a. "Effective Date" means the date that the applicable Registration Statement has been declared effective by the SEC.

b. "Excluded Registration" means any registration of equity securities of the Company solely for a Company sponsored employee benefit plan.

c. "Investors" shall have the meaning set forth above.

d. "Person" means any individual or entity including but not limited to any corporation, a limited liability company, an association, a partnership, an organization, a business, an individual, a governmental or political subdivision thereof or a governmental agency.

e. "Register," "registered," and "registration" refer to a registration effected by preparing and filing one or more registration statements of the Company in compliance with the Securities Act and/or pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis ("Rule 415"), and the declaration or ordering of effectiveness of such registration statement(s) by the United States Securities and Exchange Commission (the "SEC").

f. "Registrable Securities" means all of (i) the Underlying Shares and (ii) the Common Stock issued to the Investors as a result of any share split, share dividend, reclassification, exchange or similar event or otherwise, without regard to any limitation on purchases under the Purchase Agreement or the related agreements entered into therewith.

g. "Registration Statement" means one or more registration statements of the Company covering only the sale of the Registrable Securities.

h. "Underlying Shares" means, with respect to the First Closing Debentures and the First Closing Warrants, the Common Stock and the Warrant Shares issued and issuable pursuant to the terms of the First Closing Debentures and First Closing Warrants, as applicable, in each case without respect to any limitation or restriction on the conversion of the First Closing Debentures or the exercise of the First Closing Warrants.

2. REGISTRATION.

a. Mandatory Registration. The Company shall, within thirty (30) calendar days following the First Closing Date (the "Filing Deadline"), file with the SEC a Registration Statement covering the maximum number of Registrable Securities issuable under the First Closing Debenture and the First Closing Warrants as shall be permitted to be included thereon in accordance with applicable SEC rules, regulations and interpretations, including but not limited to Rule 415 under the Securities Act, so as to permit the resale of such Registrable Securities by the Investors at then-prevailing market prices (and not fixed prices), subject to the aggregate number of authorized share capital of the Company's Common Stock then available for issuance in its Organizational Documents. The Registration Statement shall register only Registrable Securities issuable under the First Closing Debentures and the First Closing Warrants unless otherwise approved by the Investors. The Investors and their counsel shall have a reasonable opportunity to review and comment upon such Registration Statement and any amendment or supplement to such Registration Statement and any related prospectus prior to its filing with the SEC, and the Company shall give due consideration to all reasonable comments; provided, however that if such comments are not provided within two days then the Filing Deadline and First Registration Statement Effectiveness Date shall be extended by the number of days from the date the Registration Statement is received by each Investor until it or its counsel provides comments. The Investors shall furnish all information reasonably requested by the Company for inclusion therein. The Company shall have the Registration Statement and any amendment declared effective by the SEC no later than the First Registration Statement Effectiveness Date. The Company shall keep the Registration Statement effective pursuant to Rule 415 promulgated under the Securities Act and available for the resale by the Investors of all of the Registrable Securities covered thereby at all times until the date on which the Investors shall have resold all the Registrable Securities covered thereby and no available amount of Registrable Securities issuable under the First Closing Debentures and/or the First Closing Warrants remains (the "Registration Period"). The Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. In the event that the Registration Statement becomes stale, the Company shall immediately file one or more post-effective amendments to obtain an effective Registration Statement.

b. Rule 424 Prospectus. The Company shall, as required by applicable securities regulations, from time to time file (in each case, at the earliest possible date) with the SEC, pursuant to Rule 424 promulgated under the Securities Act, the prospectus and prospectus supplements, if any, to be used in connection with sales of the Registrable Securities under the Registration Statement. The Company shall file such initial prospectus covering the Investors' sale of the Registrable Securities on the same date that the Registration Statement is declared effective by the SEC. The Investors and their counsel shall have a reasonable opportunity to review and comment upon such prospectus prior to its filing with the SEC, and

c. the Company shall give due consideration to all such comments. The Investors shall use their reasonable best efforts to comment upon such Registration Statement or prospectus within two (2) Business Days from the date the Investors receive the final pre-filing version of such prospectus.

d. Sufficient Number of Shares Registered. In the event the number of shares available under the Registration Statement is insufficient to cover all of the Registrable Securities, the Company shall amend the Registration Statement or file a new Registration Statement (a "New Registration Statement"), so as to cover all of such Registrable Securities (subject to the limitations set forth in Section 2(a)) as soon as practicable, but in any event not later than twenty (20) Business Days after the necessity thereof arises, subject to any limits that may be imposed by the SEC pursuant to Rule 415 under the Securities Act. The Company shall use its reasonable best efforts to cause such amendment and/or New Registration Statement to become effective as soon as practicable following the filing thereof. The Company agrees that it shall not file any other registration statement under the Securities Act (other than with respect to other employee related plans or rights offerings) ("Other Registration Statement") unless all of the Registrable Securities have been included in such Other Registration Statement or otherwise have been registered for resale as described above.

e. Offering. If the staff of the SEC (the "Staff") or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities that does not permit such Registration Statement to become effective and be used for resales by the Investors under Rule 415 at then prevailing market prices (and not fixed prices), or if after the filing of the Registration Statement with the SEC pursuant to Section 2(a), the Company is otherwise required by the Staff or the SEC to reduce the number of Registrable Securities included in such initial Registration Statement, then the Company shall reduce the number of Registrable Securities to be included in such initial Registration Statement (with the prior consent, which shall not be unreasonably withheld, of the Investors and their legal counsel as to the specific Registrable Securities to be removed therefrom) until such time as the Staff and the SEC shall so permit such Registration Statement to become effective and be used as aforesaid. In the event of any reduction in Registrable Securities pursuant to this paragraph, the Company shall file one or more New Registration Statements in accordance with Section 2(c) until such time as all Registrable Securities have been included in Registration Statements that have been declared effective and the prospectus contained therein is available for use by the Investors. Notwithstanding any provision herein or in the Purchase Agreement to the contrary, the Company's obligations to register Registrable Securities (and any related conditions to the Investors' obligations) shall be qualified as necessary to comport with any requirement of the SEC or the Staff as addressed in this Section 2(d).

f. Effect of Failure to File and Obtain and Maintain Effectiveness of any Registration Statement.

(i) If a Registration Statement covering the resale of all of the Registrable Securities required to be covered thereby (disregarding any reduction pursuant to Section 2(d)) and required to be filed by the Company pursuant to this Agreement is not filed with the SEC on or before the Filing Deadline for such Registration Statement then, as partial relief for the damages to Investors by reason of any such delay in its ability to sell the underlying Common Stock (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance), to the extent no Warrant Shares or Conversion Shares (as defined in the First Closing Debentures) have been registered, the Company shall be obligated to make payments to the Investors, as liquidated damages and not as a penalty, in an amount equal to 2% of the amount then currently outstanding under the First Closing Debentures (including, without limitation, all principal, interest and other payments due thereon) for each 30-day period following the Filing Deadline, or pro rata for any portion thereof following the Filing Deadline, and such payments shall be made to the Investors in cash not later than two (2) Trading Days after the end of each 30- day period. Notwithstanding the foregoing, in no event shall the amount payable as liquidated damages exceed 12% of the principal amount of the First Closing Debentures.

(ii) If a Registration Statement covering the resale of all of the Registrable Securities required to be covered thereby (disregarding any reduction pursuant to Section 2(d)) and required to be filed by the Company pursuant to this Agreement (x) is not declared effective by the SEC on or before the First Registration Statement Effectiveness Date for such Registration Statement (an "Effectiveness Failure"), and (y) if on the two Business Days immediately following the Effective Date for such Registration Statement the Company shall not have filed a "final" prospectus for such Registration Statement with the SEC under Rule 424 in accordance with Section 2(b) (whether or not such a prospectus is technically required by such rule), then, as partial relief for the damages to Investors by reason of any such delay in its ability to sell the underlying Common Stock (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, the remedies set forth in Section 2(e)(i) above) the Company shall be deemed to not have satisfied this clause (ii) and such event shall be deemed to be an Effectiveness Failure), then to the extent no Warrant Shares or Conversion Shares (as defined in the First Closing Debentures) have been registered, the Company shall be obligated to make payments to Investors, as liquidated damages and not as a penalty, in an amount equal to 2% of the amount then currently outstanding under the First Closing Debentures (including, without limitation, all principal, interest and other payments due thereon) for each 30-day period or pro rata for any portion thereof following the Effectiveness Deadline, and such payments shall be made to Investors in cash not later than two (2) Trading Days after the end of each 30-day period. Notwithstanding the foregoing, in no event shall the amount payable as liquidated damages exceed 12% of the principal amount of the First Closing Debentures.

3. PIGGYBACK REGISTRATION.

a. Right to Piggyback. (i) Whenever the Company is required or proposes to register any of its equity securities under the Securities Act (including primary and secondary registrations, and other than pursuant to an Excluded Registration) (a "Piggyback Registration"), the Company will give at least ten (10) days prior written notice to the Investors of its intention to effect such Piggyback Registration and, subject to the terms of Sections 3(b) and 3(c), will include in such Piggyback Registration (and in all related registrations or qualifications under blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Company has received written requests for inclusion therein within twenty (20) days after delivery of the Company's notice. Such written requests for inclusion will inform the Company of the number of Registrable Securities the Investors wish to include in such registration statement. If the Investors decide not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, the Investors will nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein. The Investors may withdraw its request for inclusion at any time prior to executing the underwriting agreement, or if none, prior to the applicable registration statement becoming effective.

(ii) If a Registration Statement under which the Company gives notice under this Section 3 is for an underwritten offering, then the Company will so advise the Investors. In such event, the right of the Investors' Registrable Securities to be included in a registration pursuant to this Section 3 will be conditioned upon the Investors' participation in such underwriting and the inclusion of the Investors' Registrable Securities in the underwriting to the extent provided herein. If the Investors determine to distribute their Registrable Securities through such underwriting then the Investors will enter into an underwriting agreement in customary form with the managing underwriter or underwriter(s) selected for such underwriting. If the Investors disapprove of the terms of any such underwriting, the Investors may elect to withdraw therefrom by written notice to the Company and the underwriter, delivered at least ten (10) Business Days prior to the effective date of the registration statement. Any Registrable Securities excluded or withdrawn from such underwriting will be excluded and withdrawn from the registration but are eligible for a future registration.

b. Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their good faith opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company will include in such registration: (i) first, the securities the Company proposes to sell, (ii) second, any Registrable Securities requested to be included in such registration by the Investors which, in the opinion of the underwriters, can be sold without any such adverse effect and (iii) third, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect.

c. Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of holders of the Company's equity securities and the managing underwriters advise the Company in writing that in their good faith opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company will include in such registration: (i) first, the Registrable Securities requested to be included in such registration by the Investors which, in the opinion of the underwriters, can be sold without any such adverse effect, (ii) second, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect.

d. Right to Terminate Registration. The Company will have the right to terminate or withdraw any registration initiated by it under this Section 3, whether or not any holder of Registrable Securities has elected to include securities in such registration. The Company shall give prompt written notice of such termination to the Investors.

e. Selection of Underwriters. If any Piggyback Registration is an underwritten offering, the legal counsel for the Company, the investment banker(s) and manager(s) for the offering shall be selected by the Company.

4. RELATED OBLIGATIONS.

With respect to the Registration Statement and whenever any Registrable Securities are to be registered pursuant to Section 2 including on any New Registration Statement, the Company shall use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

a. The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to any Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep such Registration Statement or any New Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statement or any New Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement.

b. The Company shall permit the Investors to review and comment upon the Registration Statement or any New Registration Statement and all amendments and supplements thereto at least two (2) Business Days prior to their filing with the SEC, and not file any document in a form to which Investors reasonably object. The Investors shall use their reasonable best efforts to comment upon the Registration Statement or any New Registration Statement and any amendments or supplements thereto within two (2) Business Days from the date the Investors receive the final version thereof. The Company shall furnish to the Investors, without charge, any correspondence from the SEC or the Staff to the Company or its representatives relating to the Registration Statement or any New Registration Statement.

c. Upon request of the Investors, the Company shall furnish to the Investors, (i) promptly after the same is prepared and filed with the SEC, at least one copy of such registration statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits, (ii) upon the effectiveness of any registration statement, a copy of the prospectus included in such registration statement and all amendments and supplements thereto (or such other number of copies as the Investors may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus, as the Investors may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by the Investors. For the avoidance of doubt, any filing available to the Investors via the SEC's live EDGAR system shall be deemed "furnished to the Investors" hereunder.

d. The Company shall use its reasonable best efforts to (i) register and qualify the Registrable Securities covered by a registration statement under such other securities or "blue sky" laws of such jurisdictions in the United States as the Investors reasonably request, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 4(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify the Investors who hold Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

e. As promptly as practicable after becoming aware of such event or facts, the Company shall notify the Investors in writing of the happening of any event or existence of such facts as a result of which the prospectus included in any registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and promptly prepare a supplement or amendment to such registration statement to correct such untrue statement or omission, and deliver a copy of such supplement or amendment to the Investors (or such other number of copies as the Investors may reasonably request) and the Investors shall cease sales under such supplement or amendment until further advised by the Investors' counsel. The Company shall also promptly notify the Investors in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a registration statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to the Investors by email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to any registration statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a registration statement would be appropriate.

f. The Company shall use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of any registration statement, or the suspension of the qualification of any Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify the Investors of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

g. The Company shall (i) cause all the Registrable Securities to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) secure designation and quotation of all the Registrable Securities on the Trading Market. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 4.

h. The Company shall cooperate with the Investors to facilitate the timely preparation and delivery of the Registrable Securities (not bearing any restrictive legend) either by DWAC, DRS, or in certificated form if DWAC or DRS is unavailable, to be offered pursuant to any registration statement and enable such Registrable Securities to be in such denominations or amounts as the Investors may reasonably request and registered in such names as the Investors may request.

i. The Company shall at all times provide a transfer agent and registrar with respect to its Common Stock.

j. If reasonably requested by the Investors, the Company shall (i) immediately incorporate in a prospectus supplement or post-effective amendment such information as the Investors believe should be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities, (ii) make all required filings of such prospectus supplement or post-effective amendment as soon as practicable upon notification of the matters to be incorporated in such prospectus supplement or post-effective amendment, and (iii) supplement or make amendments to any Registration Statement.

k. The Company shall use its reasonable best efforts to cause the Registrable Securities covered by any registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

l. Within one (1) Business Day after any registration statement which includes the Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors) confirmation that such registration statement has been declared effective by the SEC in the form attached hereto as Exhibit A. Thereafter, if requested by the Investors at any time, the Company shall require its counsel to deliver to the Investors a written confirmation whether or not the effectiveness of such registration statement has lapsed at any time for any reason (including, without limitation, the issuance of a stop order) and whether or not the registration statement is current and available to the Investors for sale of all of the Registrable Securities.

m. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Investors of Registrable Securities pursuant to any registration statement.

5. OBLIGATIONS OF THE INVESTORS.

a. The Company shall notify the Investors in writing of the information the Company reasonably requires from the Investors in connection with any Registration Statement hereunder. The Investors shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

b. The Investors agree to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder.

c. The Investors agree that, upon receipt of any notice from the Company of the happening of any event or existence of facts of the kind described in Section 4(f) or the first sentence of Section 4(e), the Investors will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until the Investors' receipt of the copies of the supplemented or amended prospectus contemplated by Section 4(f) or the first sentence of Section 4(e). Notwithstanding anything to the contrary, the Company shall cause its transfer agent to promptly deliver Common Stock without any restrictive legend in accordance with the terms of the Purchase Agreement or the related agreements entered into therewith, as applicable, in connection with any sale of Registrable Securities with respect to which any Investor has entered into a contract for sale prior to the Investors' receipt of a notice from the Company of the happening of any event of the kind described in Section 4(f) or the first sentence of Section 4(e) and for which the Investors have not yet settled.

6. EXPENSES OF REGISTRATION.

All reasonable expenses, other than sales or brokerage commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2, 3 and 4, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company, shall be paid by the Company.

7. INDEMNIFICATION.

a. To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Investors, each Person, if any, who controls the Investors, the members, the directors, officers, partners, employees, agents, representatives of the Investors and each Person, if any, who controls the Investors within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act") (each, an "Indemnified Person"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, attorneys' fees, amounts paid in settlement or expenses, joint or several (collectively, "Claims"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("Indemnified Damages"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in the Registration Statement, any New Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("Blue Sky Filing"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to the Registration Statement or any New Registration Statement or (iv) any material violation by the Company of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "Violations"). The Company shall reimburse each Indemnified Person promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 7(a): (A) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information about the Investors furnished in writing to the Company by such Indemnified Person expressly for use in connection with the preparation of the Registration Statement, any New Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 4(c) or Section 4(e), (B) with respect to any superseded prospectus, shall not inure to the benefit of any such person from whom the person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any person controlling such person) if the untrue statement or omission of material fact contained in the superseded prospectus was corrected in the revised prospectus, as then amended or supplemented, if such revised prospectus was timely made available by the Company pursuant to Section 4(c) or Section 4(e), and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to a violation and such Indemnified Person, notwithstanding such advice, used it, (C) shall not be available to the extent such Claim is based on a failure of the Investors to deliver or to cause to be delivered the prospectus made available by the Company, if such prospectus was timely made available by the Company pursuant to Section 4(c) or Section 4(e), and (D) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 10.

b. Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 7 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 7, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of one such counsel to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. The Indemnified Party or Indemnified Person shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 7, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

c. The indemnification required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

d. The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

8. CONTRIBUTION.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 7 to the fullest extent permitted by law; provided, however, that:
(a) no seller of Registrable Securities guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of fraudulent misrepresentation, and (b) contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities.

9. REPORTS AND DISCLOSURE UNDER THE SECURITIES ACTS.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("Rule 144"), the Company agrees, at the Company's sole expense, to:

a. make and keep public information available, as those terms are understood and defined in Rule 144 except in the case of a sale of all or substantially all of the assets of the Company, a merger or reorganization of the Company with one or more other entities in which the Company is not the surviving entity or any transaction or series of related transactions as a result of which any Person (together with its Affiliates) acquires then outstanding securities of the Company representing more than fifty percent (50%) of the voting control of the Company;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144;

c. furnish to the Investors so long as the Investors own Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting and or disclosure provisions of Rule 144, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration; and

d. take such additional action as is requested by the Investors to enable the Investors to sell the Registrable Securities pursuant to Rule 144, including, without limitation, delivering all such legal opinions, consents, certificates, resolutions and instructions to the Company's Transfer Agent as may be requested from time to time by the Investors and otherwise fully cooperate with Investors and Investors' broker to effect such sale of securities pursuant to Rule 144.

The Company agrees that damages may be an inadequate remedy for any breach of the terms and provisions of this Section 9 and that Investors shall, whether or not it is pursuing any remedies at law, be entitled to equitable relief in the form of a preliminary or permanent injunctions, without having to post any bond or other security, upon any breach or threatened breach of any such terms or provisions.

10. ASSIGNMENT OF REGISTRATION RIGHTS.

The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investors.

11. AMENDMENT OF REGISTRATION RIGHTS.

No provision of this Agreement may be amended or waived by the parties from and after the date that is one (1) Business Day immediately preceding the filing of the Registration Statement with the SEC. Subject to the immediately preceding sentence, no provision of this Agreement may be (a) amended other than by a written instrument signed by both parties hereto or (b) waived other than in a written instrument signed by the party against whom enforcement of such waiver is sought. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

12. MISCELLANEOUS.

a. A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

b. To the extent that there is a Second Closing Date, Third Closing Date, Fourth Closing Date or Fifth Closing Date the Company and the Investors will enter into a Registration Rights Agreement pursuant to which the Company will agree to register the Underlying Shares issuable in respect of the Note and Warrant issued on such Closing Date with terms substantially similar as the terms provided in this Agreement.

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

If to the Company, to:

SAFE AND GREEN DEVELOPMENT CORPORATION
900 Biscayne Blvd #501, Office 12
Miami, Florida 33121
Attention: Nicolai Brune
Email: nbrune@sgdevco.com

If to the Investors:

As provided on the signature page hereto

or at such other email and/or to the attention of such other person as the recipient party has specified by email notice given to each other party three (3) Business Days prior to the effectiveness of such change.

d. The corporate laws of the State of New York shall govern all issues concerning this Agreement. All other questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state courts sitting in the City of New York or, to the extent such court does not have subject matter jurisdiction, the United States District Court for the Southern District of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

e. The Agreement, First Closing Debentures, First Closing Warrant, and ancillary documentation entered into between the Company and Investors therewith constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. The Agreement, First Closing Debentures, First Closing Warrant, and ancillary documentation entered into between the Company and Investors therewith supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 10, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties hereto.

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by e-mail in a ".pdf" format data file of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

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

j. 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.

k. 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.

* * * * * *

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of day and year first above written.

THE COMPANY:

SAFE AND GREEN DEVELOPMENT CORPORATION

By: /s/ Nicolai Brune
Title: Chief Financial Officer

INVESTORS:

ARENA SPECIAL OPPORTUNITIES PARTNERS II, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

ARENA SPECIAL OPPORTUNITIES (OFFSHORE) MASTER, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

ARENA SPECIAL OPPORTUNITIES PARTNERS III, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

ARENA SPECIAL OPPORTUNITIES FUND, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

Address for Notice: 8647 Baypine Road, Suite 205, Jacksonville, FL 32256
Attention: Patrick Vance, Head of Operations
E-mail for Notice:

[Signature Page to Registration Rights Agreement]

EXHIBIT A

TO REGISTRATION RIGHTS AGREEMENT

FORM OF NOTICE OF EFFECTIVENESS OF REGISTRATION STATEMENT

[_____], [2024]

[Investor]
8647 Baypine Road, Suite 205
Jacksonville, FL 32256

Re: Effectiveness of Registration Statement

Ladies and Gentlemen:

We are counsel to SAFE AND GREEN DEVELOPMENT CORPORATION, a Delaware corporation (the "Company"), and have represented the Company in connection with that certain Securities Purchase Agreement, dated as of August 12, 2024 (as amended, restated amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), entered into by and between the Company and the investor party thereto (the "Investors"), pursuant to which the Company has agreed to issue to the Investors certain shares of common stock of the Company, par value $0.001 per share ("Common Stock"), in accordance with the terms of the Purchase Agreement and the related documents referenced below. Capitalized terms used but not defined herein have the meanings set forth in the Purchase Agreement. In connection with the transactions contemplated by the Purchase Agreement, the Company has registered with the U.S. Securities and Exchange Commission the following Common Stock:

(1) _____Conversion Shares (as defined in the Debentures) issued and/or to be issued to the Investors upon conversion of the Debentures issued on the First Closing Date.

(2) _____Warrant Shares issued and/or to be issued to the Investors upon exercise of the Warrants issued to the Investors on [____], 2024 in accordance with the terms thereof.

Pursuant to the Purchase Agreement, the Company and the Investors have also entered into a Registration Rights Agreement, dated as of August 12, 2024 (the "Registration Rights Agreement"), pursuant to which the Company agreed, among other things, to register the Registrable Securities (as defined in the Registration Rights Agreement) under the Securities Act of 1933, as amended (the "Securities Act"). In connection with the Company's obligations under the Purchase Agreement and the Registration Rights Agreement, on [_____], [2024], the Company filed a Registration Statement (File No. 333-[_____]) (the "Registration Statement") with the Securities and Exchange Commission (the "SEC") relating to the resale of the Registrable Securities indicated above.

In connection with the foregoing, we advise you that a member of the SEC's staff has advised us by telephone that the SEC has entered an order declaring the Registration Statement effective under the Securities Act at [_____] [A.M./P.M.] on [_____], [2024] and we have no knowledge, after telephonic inquiry of a member of the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the Securities Act pursuant to the Registration Statement and may be issued without any restrictive legend.

Very truly yours,
[Company Counsel]

By: _____

Exhibit 10.3

SECURITY AGREEMENT

SECURITY AGREEMENT (this "Agreement"), dated as of August 12, 2024, by and among **SAFE AND GREEN DEVELOPMENT CORPORATION,** a Delaware corporation (the "Company"), the Guarantors (as defined below) and those certain holders of the Company's Debentures in an original aggregate principal amount of up to $10,277,776.75 (collectively, the "Holders" of the "Debentures") their endorsees, transferees and assigns (collectively, with the Agent (as defined below), the "Secured Parties").

WHEREAS, the Company and the Secured Parties have entered into that certain Securities Purchase Agreement dated as of the date hereof (as amended and in effect from time to time, the "SPA"), and pursuant to which, the Company has agreed to issue the Debentures, subject to the terms SPA; and

WHEREAS, pursuant to a certain Guaranty, dated as of the date hereof (the "Guaranty"), the Guarantors agreed to guarantee and act as surety for payment of the Debentures; and

WHEREAS, the Company and the Guarantors are referred to herein as a "Debtor" and collectively as the "Debtors"; and

WHEREAS, in order to induce the Secured Parties to extend the loans evidenced by the Debentures, each Debtor has agreed to execute and deliver to the Secured Parties this Agreement and to grant the Secured Parties, pari passu with each other Secured Party and through the Agent (as defined in Section 17, below), a security interest in all assets of each Debtor to secure the prompt payment, performance and discharge in full of all of the Company's obligations under the Debentures; and

WHEREAS, the Debtors wish to grant security interests in favor of the Secured Parties as herein provided;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions**. All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the SPA. All terms defined in the Uniform Commercial Code of the State (as hereinafter defined) and used herein shall have the same definitions herein as specified therein, however, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9, and the following terms shall have the following meanings:

"Event of Default" means the occurrence of any "Event of Default" under and as defined in each of the SPA and the Debentures, or the failure of the Company to comply with any term or covenant of any Transaction Document (including this Agreement) to which it is a party.

"Guarantors" means Majestic World Holdings, LLC; Norman Berry II Owner LLC; LV Peninsula Holding, LLC; MyVonia Innovations LLC; XeneHome, LLC; XeneTitle, LLC; XeneApp, LLC; each a subsidiary of the Company that provides a guarantee of all or any portion of the Obligations of the Company to the Secured Parties.

"Lien" means any mortgage, charge, pledge, hypothecation, security interest, assignment by way of security, lien (statutory or otherwise), encumbrance, conditional sale agreement, capital lease, financing lease, deposit arrangement, title retention agreement, and any other agreement, trust or arrangement that in substance secures payment or performance of an obligation.

"Obligations" means, collectively, (a) all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing, due and owing by or otherwise payable by the Company or the Guarantors to the Secured Parties, in any currency, under, in connection with or pursuant to any Transaction Document (including, without limitation, this Agreement), and whether incurred by the Company or the Guarantors alone or jointly with another or others and whether as principal, guarantors or surety and in whatever name or style and (b) all expenses, costs and charges incurred by or on behalf of the Secured Parties in connection with any Transaction Document (including this Agreement) or the Collateral, including all legal fees, court costs, receiver's or agent's remuneration and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment for the Collateral, and of taking, defending or participating in any action or proceeding in connection with any of the foregoing matters or otherwise in connection with the Secured Parties' interest in any Collateral, whether or not directly relating to the enforcement of this Agreement or any other Transaction Document.

"Permitted Lien" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet delinquent by more than 45 days or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company's, its Subsidiaries' business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Company's and its Subsidiaries' business which secure obligations which are not more than 45 days overdue, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a), (b), and (d) thereunder, and (d) Liens incurred in connection with Permitted Indebtedness under clause (f) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased; (e) Liens in existence on the date of this Agreement and which have been set forth on Schedule 4.1(o) hereto; (f) Liens of goods securing trade letters of credit not to exceed in the aggregate $500,000.00; (f) Liens existing on any real or personal property prior to the time of acquisition or placed on property being acquired by Company or a Subsidiary to secure a portion of the purchase price; (g) Liens renewing, extending Liens permitted; and (h) Liens in respect of property or assets securing obligations of a Subsidiary to the Company, with the prior written approval of the Purchaser.

"State" means the State of New York.

"Transaction Document(s)" has the meaning provided for in the SPA, provided, however, for purposes of this Agreement, upon the indefeasible repayment in full, in cash, of the Debentures and all obligations owing thereunder, such term shall thereafter not include the Warrant.

2. **Grant of Security Interest**.

2.1. Grant; Collateral Description. The Debtors hereby grant to the Secured Parties, to secure the payment and performance in full of all of the Obligations, a security interest in and pledges and assigns to the Secured Parties the following properties, assets and rights of each Debtor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral"): all personal and fixture property of every kind and nature including all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents (whether tangible or electronic), accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles).

2.2. Commercial Tort Claims. The Secured Parties acknowledge that the attachment of their security interests in any commercial tort claim as original collateral is subject to each Debtor's compliance with §4.7.

3. **Authorization to File Financing Statements**. The Debtors hereby irrevocably authorize the Agent at any time and from time to time to file in any filing office which the Agent deems necessary in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Debtors, or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State or such other jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the applicable Debtor is an organization, the type of organization and any organizational identification number issued to the applicable Debtor. The Debtors agree to furnish any such information to the Agent promptly upon the Agent's reasonable request.

4. **Other Actions**. Further to insure the attachment, perfection and first priority of, and the ability of the Agent to enforce, the Secured Parties' security interests in the Collateral, each Debtor agrees, in each case at such Debtor's expense, to take the following actions with respect to the following Collateral and without limitation on such Debtor's other obligations contained in this Agreement:

4.1. Promissory Notes and Tangible Chattel Paper. If such Debtor shall, now or at any time hereafter, hold or acquire any promissory notes or tangible chattel paper with an aggregate value for all such promissory notes or tangible chattel paper in excess of $150,000, such Debtor shall forthwith endorse, assign and deliver the same to the Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Agent on behalf of Secured Parties may from time to time specify.

4.2. Deposit Accounts. For each deposit account that such Debtor, now or at any time hereafter, opens or maintains, such Debtor shall, within forty-five days of the date hereof, or for any such deposit account opened following the date hereof, the date of opening such deposit account, unless waived in writing by the Agent, pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (a) cause the depositary bank to agree to comply without further consent of such Debtor, at any time with instructions from the Agent to such depositary bank directing the disposition of funds from time to time credited to such deposit account, or (b) arrange for the Agent on behalf of the Secured Parties to become the customer of the depositary bank with respect to the deposit account, with such Debtor being permitted, only with the consent of the Agent, to exercise rights to withdraw funds from such deposit account. The Secured Parties agree with each Debtor that the Agent shall not give any such instructions or withhold any withdrawal rights from such Debtor, unless an Event of Default has occurred and is continuing, or, if effect were given to any withdrawal not otherwise permitted by the Transaction Documents, would occur. The provisions of this paragraph shall not apply to any deposit accounts specially and exclusively used (i) for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of such Debtor's salaried employees, (ii) in cases where a Debtor acts as custodian, trust, fiduciary or escrow agent for the benefit of a third party in transactions permitted by the Transaction Documents, and (iii) as petty cash accounts that collectively have an average daily balance at any time of less than $25,000.

4.3. Investment Property. If any Debtor shall, now or at any time hereafter, hold or acquire any certificated securities, the Company shall forthwith endorse, assign and deliver the same to the Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Parties may from time to time specify. If any securities now or hereafter acquired by any Debtor are uncertificated and are issued to such Debtor or its nominee directly by the issuer thereof, such Debtor shall promptly (but in any event within five Business Days) notify the Secured Parties thereof and, at the Agent's request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (a) cause the issuer to agree to comply without further consent of such Debtor or such nominee, at any time with instructions from the Agent as to such securities, or (b) arrange for the Secured Parties to become the registered owners of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by any Debtor are held by such Debtor or its nominee through a securities intermediary or commodity intermediary, such Debtor shall promptly (but in any event within five Business Days) notify the Secured Parties thereof and, at the Secured Parties' request and option, pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply, in each case without further consent of such Debtor or such nominee, at any time with entitlement orders or other instructions from the Agent to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Agent to such commodity intermediary, or (ii) in the case of financial assets or other investment property held through a securities intermediary, arrange for the Secured Parties to become the entitlement holders with respect to such investment property, with such Debtor being permitted, only with the consent of the Agent, on behalf of the Secured Parties, to exercise rights to withdraw or otherwise deal with such investment property. The Secured Parties agrees with each Debtor that the Agent shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Debtor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights not otherwise permitted by the Transaction Documents, would occur. The provisions of this paragraph shall not apply to any financial assets credited to a securities account for which the Secured Parties are the securities intermediaries.

4.4. Collateral in the Possession of a Bailee. If any Collateral with an aggregate value in excess of $150,000 is, now or at any time hereafter, in the possession of a bailee, such Debtor shall promptly notify the Secured Parties thereof and, at the Agent's reasonable request and option, shall promptly obtain an acknowledgement from the bailee, in form and substance reasonably satisfactory to the Agent, that the bailee holds such Collateral for the benefit of the Secured Parties and such bailee's agreement to comply, without further consent of such Debtor, at any time with instructions of the Agent as to such Collateral.

4.5. Electronic Chattel Paper, Electronic Documents and Transferable Records. If any Debtor, now or at any time hereafter, holds or acquires an interest in any Collateral that is electronic chattel paper, any electronic document or any "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Debtor shall promptly notify the Secured Parties thereof and, at the request and option of the Agent, shall take such action as the Secured Party may reasonably request to vest in the Secured Parties control, under §9-105 of the Uniform Commercial Code of the State or any other relevant jurisdiction, of such electronic chattel paper, control, under §7-106 of the Uniform Commercial Code of the State or any other relevant jurisdiction, of such electronic document or control, under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Secured Parties agree with each Debtor that the Agent will arrange, pursuant to procedures satisfactory to the Agent and so long as such procedures will not result in the Secured Parties' loss of control, for such Debtor to make alterations to the electronic chattel paper, electronic document or transferable record permitted under UCC §9-105, UCC §7-106, or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or §16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Debtor with respect to such electronic chattel paper, electronic document or transferable record. The provisions of this §4.5 relating to electronic documents and "control" under UCC §7-106 apply in the event that the 2003 revisions to Article 7, with amendments to Article 9, of the Uniform Commercial Code, in substantially the form approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, are now or hereafter adopted and become effective in the State or in any other relevant jurisdiction.

4.6. Letter-of-Credit Rights. If any Debtor is, now or at any time hereafter, a beneficiary under a letter of credit with a stated amount in excess of $100,000, or if any Debtor is a beneficiary under letters of credit not assigned to the Secured Parties with an aggregate stated amount in excess of $250,000, such Debtor shall promptly notify the Secured Parties thereof and, at the request and option of the Agent, such Debtor shall, pursuant to an agreement in form and substance reasonably satisfactory to the Agent, either (a) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Secured Parties of the proceeds of the letter of credit or (b) arrange for the Secured Parties to become the transferees beneficiaries of the letter of credit.

4.7. Commercial Tort Claims. If any Debtor shall, now or at any time hereafter, hold or acquire a commercial tort claim, such Debtor shall promptly notify the Secured Parties in a writing signed by such Debtor of the particulars thereof and grant to the Secured Parties in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Agent.

4.8. Other Actions as to any and all Collateral. The Debtors further agree, upon the request of the Agent and at the Agent's option, to take any and all other actions as the Secured Parties may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of the Agent to enforce, the Secured Parties' security interests in any and all of the Collateral, including (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code of any relevant jurisdiction, to the extent, if any, that such Debtor's signature thereon is required therefor, (b) causing the Secured Parties' name to be noted as secured parties on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Agent to enforce, the Secured Parties security interests in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Agent to enforce, the Secured Parties security interests in such Collateral, (d) obtaining governmental and other third party waivers, consents and approvals, in form and substance reasonably satisfactory to the Secured Parties, including any consent of any licensor, lessor or other Person obligated on Collateral, (e) obtaining waivers from mortgagees and landlords of such Debtor's primary place of business exceeds $250,000, in form and substance reasonably satisfactory to the Secured Parties and (f) taking all actions under any earlier versions of the Uniform Commercial Code or under any other law, as reasonably determined by the Secured Parties to be applicable in any relevant Uniform Commercial Code or other jurisdiction, including any foreign jurisdiction.

5. **Representations and Warranties Concerning a Debtor's Legal Status**. Each Debtor has, on the date hereof, delivered to the Secured Parties a certificate signed by such Debtor and entitled "Perfection Certificate" (the "Perfection Certificate"). Each Debtor represents and warrants to the Secured Parties as follows: as of the date hereof (a) such Debtor's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof, (b) such Debtor is an organization of the type, and is organized in the jurisdiction, set forth in the Perfection Certificate, (c) the Perfection Certificate accurately sets forth such Debtor's organizational identification number or accurately states that such Debtor has none, (d) the Perfection Certificate accurately sets forth such Debtor's place of business or, if more than one, its chief executive office, as well as such Debtor's mailing address, if different, (e) all other information set forth on the Perfection Certificate pertaining to such Debtor is accurate and complete, and (f) there has been no material change in any of such information since the date on which the Perfection Certificate was signed by such Debtor.

6. **Covenants Concerning each Debtor's Legal Status**. Each Debtor covenants with the Secured Parties as follows: (a) without providing at least fifteen (15) days prior written notice to the Agent, such Debtor will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (b) if such Debtor does not have an organizational identification number and later obtains one, such Debtor will forthwith notify the Secured Parties of such organizational identification number, and (c) such Debtor will not change its type of organization, jurisdiction of organization or other legal structure.

7. **Representations and Warranties Concerning Collateral, Etc**. Each Debtor further represents and warrants to the Secured Parties as follows: (a) such Debtor is the owner of or has other rights in or power to transfer the Collateral, free from any right or claim of any Person or any adverse lien, except for the security interest created by this Agreement and the Permitted Liens, (b) none of the account debtors or other Persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral, (c) no Debtor holds commercial tort claim except as indicated on such Debtor's Perfection Certificate, (d) all other information set forth on such Debtor's Perfection Certificate pertaining to the Collateral is accurate and complete, and (e) there has been no material change in any of such information since the date on which each Debtor's Perfection Certificate was signed by such Debtor.

8. **Covenants Concerning Collateral, Etc**. Each Debtor further covenants with the Secured Parties as follows: (a) other than inventory sold or replaced in the ordinary course of business consistent with past practices, the Collateral, to the extent not delivered to the Secured Parties pursuant to §4, will be kept at those locations listed on the Perfection Certificate and such Debtor will not remove the Collateral from such locations, without providing at least ten (10) Business Days prior written notice to the Agent, (b) except for the security interest herein granted, such Debtor shall be the owner of or have other rights in the Collateral free from any right or claim of any other Person or any Lien (other than Permitted Liens), and such Debtor shall defend the same against all claims and demands of all Persons at any time claiming the same or any interests therein adverse to the Secured Parties, (c) other than in favor of the Secured Parties or with respect to any Permitted Lien, no Debtor shall pledge, mortgage or create, or suffer to exist any right of any Person in or claim by any Person to the Collateral, or any Lien in the Collateral in favor of any Person, or become bound (as provided in Section 9-203(d) of the Uniform Commercial Code of the State or any other relevant jurisdiction or otherwise) by a security agreement in favor of any Person as secured party, (d) each Debtor will permit the Agent, or its designee, upon advance written notice to such Debtor to inspect the Collateral during normal business hours, wherever located, provided, if any Event of Default has occurred and is continuing, no advance written notice to such Debtor shall be required and any such inspection shall be permitted at any reasonable time, (e) each Debtor will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement, and (f) no Debtor will sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral, or any interest therein except for, so long as no Event of Default has occurred and is continuing, dispositions of obsolete or worn-out property, the granting of non-exclusive licenses in the ordinary course of business, and the sale of inventory in the ordinary course of business consistent with past practices.

9. **Collateral Protection Expenses; Preservation of Collateral**.

9.1. Expenses Incurred by Secured Parties. In the Secured Parties' discretion, the Secured Parties may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, and pay any necessary filing fees or insurance premiums, in each case if the Debtors fail to do so. The Debtors agree to reimburse the Agent for the benefit of the Secured Parties on demand for all expenditures so made. The Secured Parties shall have no obligation to the Debtors to make any such expenditures, nor shall the making thereof be construed as a waiver or cure of any Event of Default.

9.2. Secured Parties' Obligations and Duties. Anything herein to the contrary notwithstanding, each Debtor shall remain obligated and liable under each contract or agreement comprised in the Collateral to be observed or performed by such Debtor thereunder. The Secured Parties shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Secured Parties of any payment relating to any of the Collateral, nor shall the Secured Parties be obligated in any manner to perform any of the obligations of any Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Secured Parties in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Secured Parties or to which the Secured Parties may be entitled at any time or times. The Secured Parties' sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under §9-207 of the Uniform Commercial Code of the State or otherwise, shall be to deal with such Collateral in the same manner as the Secured Parties deal with similar property for their own accounts.

10. **Securities and Deposits**. The Agent may at any time following and during the continuance of a payment default or an Event of Default, at its option, transfer to itself, for the benefit of the Secured Parties, or any nominee, any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Agent may, on behalf of the Secured Parties, following and during the continuance of a payment default or an Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to the Collateral. Regardless of the adequacy of Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Secured Parties to the Debtors may at any time be applied to or set off against any of the Obligations then due and owing.

11. **Notification to Account Debtors and Other Persons Obligated on Collateral**. If an Event of Default shall have occurred and be continuing:

(a) each Debtor shall, at the request and option of the Secured Parties, notify account debtors and other Persons obligated on any of the Collateral of the security interest of each of the Secured Parties in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Secured Parties or to any financial institution designated by the Agent as the Secured Parties' agent therefor;

(b) the Secured Parties may themselves, without notice to or demand upon the Debtors, so notify account debtors and other Persons obligated on Collateral;

(c) after the making of such a request or the giving of any such notification, each Debtor shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by such Debtor as trustee for the Secured Parties, for the benefit of the Secured Parties, without commingling the same with other funds of such Debtor and shall turn the same over to the Secured Parties in the identical form received, together with any necessary endorsements or assignments; and

(d) the Secured Parties shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral and received by the Secured Parties to the payment of the Obligations, such proceeds to be immediately credited after final payment in cash or other immediately available funds of the items giving rise to them.

12. **Power of Attorney**.

12.1. Appointment and Powers of Secured Parties. The Debtors hereby irrevocably constitute and appoint the Agent and any officer or agent thereof, with full power of substitution, as their true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of each Debtor or in the Agent's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of each Debtor, without notice to or assent by each Debtor, to do the following:

(a) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code of the State or any other relevant jurisdiction and as fully and completely as though the Secured Parties were the absolute owners thereof for all purposes, and to do, at the Debtors' expense, at any time, or from time to time, all acts and things which the Agent deems necessary or useful to protect, preserve or realize upon the Collateral and the Secured Parties' security interests therein, in order to effect the intent of this Agreement, all no less fully and effectively as the Debtors might do, including (i) upon written notice to the Debtors, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Agent so elects, with a view to causing the liquidation of assets of the issuer of any such securities and (ii) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral; and

(b) to the extent that the Debtors' authorization given in §3 is not sufficient, to file such financing statements with respect hereto, with or without the Debtors' signature, or a photocopy of this Agreement in substitution for a financing statement, as the Agent may deem appropriate and to execute in each Debtor's name such financing statements and amendments thereto and continuation statements which may require each Debtor's signature.

12.2. Ratification by Debtors. To the extent permitted by law, each Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

12.3. No Duty on Secured Party. The powers conferred on the Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Agent to exercise any such powers. The Agent shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtors for any act or failure to act, except for the Agent's own gross negligence or willful misconduct.

13. **Rights and Remedies**.

13.1. General. If an Event of Default shall have occurred and be continuing, the Secured Parties, without any other notice to or demand upon the Debtors, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of secured parties under the Uniform Commercial Code of the State or any other relevant jurisdiction and any additional rights and remedies as may be provided to secured parties in any jurisdiction in which Collateral is located, including the right to take possession of the Collateral, and for that purpose the Agent may, so far as the Debtors can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Agent may in its discretion require any Debtor to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of such Debtors's principal office(s) or at such other locations as the Agent may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Agent shall give to such Debtor at least ten (10) Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. Each Debtor hereby acknowledges that ten (10) Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, the Debtors waive any and all rights that they may have to a judicial hearing in advance of the enforcement of any of the Agent's rights and remedies hereunder, including its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

14. **Standards for Exercising Rights and Remedies**. To the extent that applicable law imposes duties on the Secured Parties to exercise remedies in a commercially reasonable manner, each Debtor acknowledges and agrees that it is not commercially unreasonable for the Secured Parties (a) to fail to incur expenses reasonably deemed significant by the Secured Parties to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other Persons obligated on Collateral or to fail to remove Liens on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other Persons obligated on the Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of the Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as the Debtors, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of the Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of the Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure the Secured Parties against risks of loss, collection or disposition of the Collateral or to provide to the Secured Parties a guaranteed return from the collection or disposition of such Collateral, or (l) to the extent deemed appropriate by the Agent, to obtain the services of brokers, investment bankers, consultants and other professionals to assist the Agent in the collection or disposition of any of the Collateral. Each Debtor acknowledges that the purpose of this §14 is to provide non-exhaustive indications of what actions or omissions by the Agent would fulfill the Agent's duties under the Uniform Commercial Code of the State or any other relevant jurisdiction in the Agent's exercise of remedies against the Collateral and that other actions or omissions by the Agent shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this §14. Without limitation upon the foregoing, nothing contained in this §14 shall be construed to grant any rights to the Debtors or to impose any duties on the Secured Parties that would not have been granted or imposed by this Agreement or by applicable law in the absence of this §14.

15. **No Waiver by Secured Parties, etc**. The Secured Parties shall not be deemed to have waived any of their rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Agent on behalf of the Secured Parties. No delay or omission on the part of the Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Secured Parties with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Agent deems expedient.

16. **Suretyship Waivers by Debtors**. Each Debtor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, each Debtor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any such Collateral, to the addition or release of any party or Person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Agent may deem advisable. The Secured Parties shall have no duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in §9.2. Each Debtor further waives any and all other suretyship defenses.

17. **Appointment of Agent**. The Secured Parties hereby appoint Arena Special Opportunities Partners II, LP to act as their agent (the "Agent") for purposes of exercising any and all rights and remedies of the Secured Parties hereunder. Such appointment shall continue until revoked in writing by a majority of the Secured Parties, at which time the majority of the Secured Parties shall appoint a new Agent. The Agent shall have the rights, responsibilities and immunities set forth in Annex A.

18. **Marshaling**. The Secured Parties shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the rights and remedies of the Secured Parties hereunder and of the Secured Parties in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, the Debtors hereby agree that they will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Secured Parties' rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Debtors hereby irrevocably waive the benefits of all such laws.

19. **Proceeds of Dispositions; Expenses**. The Debtors shall pay to the Agent on demand any and all documented expenses, including reasonable attorneys' fees and disbursements, actually incurred or paid by the Agent in protecting or preserving the Secured Parties rights and remedies under or in respect of any of the Obligations or any of the Collateral and any such expenses actually incurred in releasing any security interest granted hereunder and, in addition, the Debtors shall pay to the Agent on demand any and all expenses, including attorneys' fees and disbursements, incurred or paid by the Agent for the benefit of the Secured Parties in enforcing the Secured Parties' rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as is provided in the SPA, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code of the State, any excess shall be returned to the Debtors. In the absence of final payment and satisfaction in full of all of the Obligations, the Debtors shall remain liable for any deficiency.

20. **Overdue Amounts**. Until paid, all amounts due and payable by the Debtors hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Transaction Documents.

21. **Governing Law; Consent to Jurisdiction**. **THIS AGREEMENT IS A CONTRACT UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL FOR ALL PURPOSES BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF SAID STATE OF NEW YORK. THE DEBTORS AND THE SECURED PARTIES EACH AGREE THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT OR ANY OTHER ACTION BROUGHT BY SUCH PERSON ARISING HEREUNDER OR IN ANY WAY RELATED TO THIS AGREEMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE BOROUGH OF MANHATTAN OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON SUCH PERSON BY MAIL AT THE ADDRESS SPECIFIED ON THE SIGNATURE PAGE OF EACH PARTY HERETO. THE DEBTORS AND THE SECURED PARTIES EACH HEREBY WAIVE ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUIT BROUGHT IN THE STATE OF NEW YORK OR ANY COURT SITTING THEREIN OR THAT A SUIT BROUGHT THEREIN IS BROUGHT IN AN INCONVENIENT COURT.**

22. **Waiver of Jury Trial**. THE DEBTORS AND THE SECURED PARTIES EACH WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OR ENFORCEMENT OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, the Debtors waive any right which they may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Debtors (a) certify that neither the Secured Parties nor any representative, agent or attorney of the Secured Parties has represented, expressly or otherwise, that the Secured Parties would not, in the event of litigation, seek to enforce the foregoing waivers or other waivers contained in this Agreement and (b) acknowledge that, in entering into this Agreement and any other Transaction Document to which any of the Secured Parties is a party, the Secured Parties are relying upon, among other things, the waivers and certifications contained in this §22.

23. **Notices**. All notices, requests and other communications hereunder shall be made in the manner set forth in the SPA.

24. **Miscellaneous**. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon each Debtor and its successors and assigns, and shall inure to the benefit of the Secured Parties and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Debtors acknowledge receipt of a copy of this Agreement.

25. **Release of Collateral; Reinstatement**. (a) Upon any sale, transfer or other disposition of any Collateral which is permitted by the Transaction Documents, upon receipt by the Secured Parties of any proceeds thereof which the Debtors are required to pay to the Agent, for the benefit of the Secured Parties pursuant to the terms of the Transaction Documents, such Collateral (but not the proceeds thereof) shall automatically be released from the Liens created hereby, and each Secured Party agrees that, at the request and sole expense of the Debtors, it shall promptly execute and deliver to the Debtors all releases or other documents reasonably necessary for the release of such Lien on such Collateral. In addition, each Secured Party agrees that upon the indefeasible repayment in full, in cash, of all Obligations owing under the Transaction Documents (other than (a) contingent obligations not due and owing, and, (b) so long as the Debtors are in compliance with all of their obligations under the Warrant, the Debtors' obligations under the Warrant) and the termination of any commitments pursuant to the terms of the Transaction Documents, the security interests granted hereby shall, subject to the Secured Parties' rights of reinstatement set forth herein or in any other Transaction Document, automatically terminate, all rights to the Collateral shall revert to the Debtors without further action from any Person and each Secured Party agrees that, at the request and sole expense of the Debtors, it shall promptly execute and deliver to the Debtors all releases or other documents reasonably necessary for the release of the Liens on the Collateral.

(b) Notwithstanding anything to the contrary contained herein, the Debtors acknowledge and agree their obligations and liabilities under the Transaction Documents (and all security interests and other Liens granted hereunder) shall be deemed to have continued in existence and shall be reinstated with full force and effect if, at any time on or after the payment of any Obligations under the Transaction Documents, all or any portion of the Obligations or any other amounts applied by the Secured Parties to any of the Obligations is voided or rescinded or must otherwise be returned by the Secured Parties to the Debtors upon such Debtor's insolvency, bankruptcy or reorganization or otherwise.

[Signature pages to follow]

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused this Agreement to be duly executed as of the date first above written.

THE COMPANY

SAFE AND GREEN DEVELOPMENT CORPORATION

By: /s/ Nicolai Brune
Title: CFO

GUARANTORS

MAJESTIC WORLD HOLDINGS, LLC

By: /s/ Nicolai Brune
Title: Manager

NORMAN BERRY II OWNER LLC

By: /s/ Nicolai Brune
Title: Manager

LV PENINSULA HOLDING, LLC

By: /s/ Nicolai Brune
Title: Manager

[Signature Page to Security Agreement]

MYVONIA INNOVATIONS LLC

By: /s/ Nicolai Brune
Title: Manager

XENEHOME, LLC

By: /s/ Nicolai Brune
Title: Manager

XENETITLE, LLC

By: /s/ Nicolai Brune
Title: Manager

XENEAPP, LLC

By: /s/ Nicolai Brune
Title: Manager

[Signature Page to Security Agreement]

Accepted:

AGENT

Arena Special Opportunities Partners II, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

HOLDER

Arena Special Opportunities Partners II, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

Arena Special Opportunities (Offshore) Master, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

HOLDER

Arena Special Opportunities Partners III, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

HOLDER

Arena Special Opportunities Fund, LP

By: /s/ Lawrence Cutler
Title: Authorized Signatory

[Signature Page to Security Agreement]

ANNEX A

1. **Appointment**. The Secured Parties (all capitalized terms used herein and not otherwise defined shall have the respective meanings provided in the Security Agreement to which this Annex A is attached (the "Agreement")), by their acceptance of the benefits of the Agreement, hereby designate Arena Special Opportunities Partners II, LP ("Agent") as the Agent to act as specified herein and in the Agreement. Each Secured Party shall be deemed irrevocably to authorize the Agent to take such action on its behalf under the provisions of the Agreement and any other Transaction Document (as such term is defined in the Purchase Agreement) and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto. The Agent may perform any of its duties hereunder by or through its agents or employees.

2. **Nature of Duties**. The Agent shall have no duties or responsibilities except those expressly set forth in the Agreement. Neither the Agent nor any of its partners, members, shareholders, officers, directors, employees or agents shall be liable for any action taken or omitted by it as such under the Agreement or hereunder or in connection herewith or therewith, be responsible for the consequence of any oversight or error of judgment or answerable for any loss, unless caused solely by its or their gross negligence or willful misconduct as determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction. The duties of the Agent shall be mechanical and administrative in nature; the Agent shall not have by reason of the Agreement or any other Transaction Document a fiduciary relationship in respect of any Debtor or any Secured Party; and nothing in the Agreement or any other Transaction Document, expressed or implied, is intended to or shall be so construed as to impose upon the Agent any obligations in respect of the Agreement or any other Transaction Document except as expressly set forth herein and therein.

3. **Lack of Reliance on the Agent**. Independently and without reliance upon the Agent, each Secured Party, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Company and its subsidiaries in connection with such Secured Party's investment in the Debtors, the creation and continuance of the Obligations, the transactions contemplated by the Transaction Documents, and the taking or not taking of any action in connection therewith, and (ii) its own appraisal of the creditworthiness of the Company and its subsidiaries, and of the value of the Collateral from time to time, and the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Secured Party with any credit, market or other information with respect thereto, whether coming into its possession before any Obligations are incurred or at any time or times thereafter. The Agent shall not be responsible to the Debtors or any Secured Party for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith, or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of the Agreement or any other Transaction Document, or for the financial condition of the Debtors or the value of any of the Collateral, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of the Agreement or any other Transaction Document, or the financial condition of the Debtors, or the value of any of the Collateral, or the existence or possible existence of any default or Event of Default under the Agreement, the Notes or any of the other Transaction Documents.

4. **Certain Rights of the Agent**. The Agent shall have the right to take any action with respect to the Collateral, on behalf of all of the Secured Parties. To the extent practical, the Agent shall request instructions from the Secured Parties with respect to any material act or action (including failure to act) in connection with the Agreement or any other Transaction Document, and shall be entitled to act or refrain from acting in accordance with the instructions of a majority of the Secured Parties,; if such instructions are not provided despite the Agent's request therefor, the Agent shall be entitled to refrain from such act or taking such action, and if such action is taken, shall be entitled to appropriate indemnification from the Secured Parties in respect of actions to be taken by the Agent; and the Agent shall not incur liability to any person or entity by reason of so refraining. Without limiting the foregoing, (a) no Secured Party shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting hereunder in accordance with the terms of the Agreement or any other Transaction Document, and the Debtors shall have no right to question or challenge the authority of, or the instructions given to, the Agent pursuant to the foregoing and (b) the Agent shall not be required to take any action which the Agent believes (i) could reasonably be expected to expose it to personal liability or (ii) is contrary to this Agreement, the Transaction Documents or applicable law.

5. **Reliance**. The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, statement, certificate, telex, teletype or telecopier message, cablegram, radiogram, order or other document or telephone message signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to the Agreement and the other Transaction Documents and its duties thereunder, upon advice of counsel selected by it and upon all other matters pertaining to this Agreement and the other Transaction Documents and its duties thereunder, upon advice of other experts selected by it. Anything to the contrary notwithstanding, the Agent shall have no obligation whatsoever to any Secured Party to assure that the Collateral exists or is owned by the Debtors or is cared for, protected or insured or that the liens granted pursuant to the Agreement have been properly or sufficiently or lawfully created, perfected, or enforced or are entitled to any particular priority.

6. **Indemnification**. To the extent that the Agent is not reimbursed and indemnified by the Debtors, the Secured Parties will jointly and severally reimburse and indemnify the Agent, in proportion to their initially purchased respective principal amounts of Notes , from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in performing its duties hereunder or under the Agreement or any other Transaction Document, or in any way relating to or arising out of the Agreement or any other Transaction Document except for those determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction to have resulted solely from the Agent's own gross negligence or willful misconduct. Prior to taking any action hereunder as Agent, the Agent may require each Secured Party to deposit with it sufficient sums as it determines in good faith is necessary to protect the Agent for costs and expenses associated with taking such action.

7. **Resignation by the Agent**.

(a) The Agent may resign from the performance of all its functions and duties under the Agreement and the other Transaction Documents at any time by giving 30 days' prior written notice (as provided in the Agreement) to the Debtors and the Secured Parties. Such resignation shall take effect upon the appointment of a successor Agent pursuant to clauses (b) and (c) below.

(b) Upon any such notice of resignation, the Secured Parties, acting by a majority of the Secured Parties,, shall appoint a successor Agent hereunder.

(c) If a successor Agent shall not have been so appointed within said 30-day period, the Agent shall then appoint a successor Agent who shall serve as Agent until such time, if any, as the Secured Parties appoint a successor Agent as provided above. If a successor Agent has not been appointed within such 30-day period, the Agent may petition any court of competent jurisdiction or may interplead the Debtors and the Secured Parties in a proceeding for the appointment of a successor Agent, and all fees, including, but not limited to, extraordinary fees associated with the filing of interpleader and expenses associated therewith, shall be payable by the Debtors on demand.

8. **Rights with respect to Collateral**. Each Secured Party agrees with all other Secured Parties and the Agent (i) that it shall not, and shall not attempt to, exercise any rights with respect to its security interest in the Collateral, whether pursuant to any other agreement or otherwise (other than pursuant to this Agreement), or take or institute any action against the Agent or any of the other Secured Parties in respect of the Collateral or its rights hereunder (other than any such action arising from the breach of this Agreement) and (ii) that such Secured Party has no other rights with respect to the Collateral other than as set forth in this Agreement and the other Transaction Documents. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under the Agreement. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of the Agreement including this Annex A shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

Exhibit 10.4

GUARANTY

GUARANTY (the "Guaranty"), dated as of August 12, 2024, by and the Guarantors (as defined below) and the Purchasers (as defined below).

WHEREAS, Safe and Green Development Corporation, a Delaware corporation (the "Borrower"), is the holder of certain equity interests of the Guarantors; and

WHEREAS, pursuant to that certain Security Agreement (defined below), the Borrower is pledging 100% of its equity interests in each Guarantor in favor of the Purchasers as Collateral (as defined therein);

WHEREAS, (a) the Borrower and the purchasers parties thereto (the "Purchasers") have entered into that certain Securities Purchase Agreement dated as of the date hereof (as amended and in effect from time to time, the "SPA"); (b) the Borrower has agreed to issue to the Purchasers Debentures in an aggregate principal amount of up to$10,277,776.75 (as amended and in effect from time to time, each, individually, a "Debenture" and collectively, the "Debentures") subject to the terms of the SPA; and (c) the Borrower and the Purchasers are parties to that certain Security Agreement dated as of the date hereof (as amended and in effect from time to time, the "Security Agreement");

WHEREAS, the Borrower and the Guarantors are members of a group of related entities, the success of any one of which is dependent in part on the success of the other members of such group;

WHEREAS, the Guarantors expect to receive substantial direct and indirect benefits from the transactions contemplated by the SPA and the Debentures (including, without limitation, the extensions of credit to the Borrower by the Purchasers pursuant to the SPA and the Debentures) (which benefits are hereby acknowledged);

WHEREAS, it is a condition precedent to the Purchasers' willingness to enter into the SPA and the Debentures and make the loans to the Borrower thereunder that the Guarantors execute and deliver to the Purchasers a guaranty substantially in the form hereof; and

WHEREAS, the Guarantors wish to jointly and severally guaranty the Borrower's, and any other Person's obligations to the Purchasers under or with respect to the SPA, the Debentures and the other Transaction Documents (as such term is defined in the SPA) as provided herein;

NOW, THEREFORE, the Guarantors hereby agree with the Purchasers as follows:

1. Definitions. The term (a) "Obligations" means, collectively, all debts, liabilities and obligations (including, without limitation, any expenses, costs and charges incurred by or on behalf of the Purchasers in connection with any Transaction Document), present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by the Borrower or the Guarantors to the Purchasers in any currency, under, in connection with or pursuant to any Transaction Document (including, without limitation, this Guaranty), and whether incurred by the Borrower, the Guarantors individually or jointly with another or others and whether as principal, guarantor or surety and in whatever name or style; (b) "Transaction Documents" means, collectively, this Guaranty and the "Transaction Documents" as defined in the SPA; and (c) "Guarantors" means Majestic World Holdings, LLC; Norman Berry II Owner LLC; LV Peninsula Holding, LLC; MyVonia Innovations LLC; XeneHome, LLC; XeneTitle, LLC; and XeneApp, LLC (individually, each a "Guarantor"). All other capitalized terms used herein without definition shall have the respective meanings provided therefor in the SPA.

2. Guaranty of Payment and Performance. The Guarantors hereby jointly and severally guarantee to the Purchasers the full and punctual payment when due (whether at stated maturity, by required pre-payment, by acceleration or otherwise), as well as the performance, of all of the Obligations, including all such payments which would become due but for the operation of the automatic stay pursuant to §362(a) of the Federal Bankruptcy Code and the operation of §§502(b) and 506(b) of the Federal Bankruptcy Code in a bankruptcy or other insolvency proceeding of the Borrower. This Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance of all of the Obligations and not of their collectability only and is in no way conditioned upon any requirement that the Purchasers first attempt to collect any of the Obligations from the Borrower or any other Person or resort to any collateral security or other means of obtaining payment. Should the Borrower default in the payment or performance of any of the Obligations, the joint and several obligations of the Guarantors hereunder with respect to such Obligations in default shall, upon demand by the Purchasers, become immediately due and payable to the Purchasers, without demand or notice of any nature, all of which are expressly waived by the Guarantors. Payments by the Guarantors hereunder may be required by the Purchasers on any number of occasions. All payments by the Guarantors hereunder shall be made to the Purchasers, in the manner and at the place of payment specified therefor in the Debentures, for the account of the Purchasers. The Guarantors shall make all payments hereunder without setoff or counterclaim and free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, compulsory loans, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless the Guarantors are compelled by law to make such deduction or withholding. If any such obligation is imposed upon the Guarantors with respect to any amount payable by it hereunder, the Guarantors will pay to the Purchasers on the date on which such amount is due and payable hereunder, such additional amount in U.S. dollars as shall be necessary to enable the Purchasers to receive the same net amount which the Purchasers would have received on such due date had no such obligation been imposed upon the Guarantors. The Guarantors will deliver promptly to the Purchasers certificates or other valid vouchers for all taxes or other charges deducted from or paid with respect to payments made by the Guarantors hereunder. The obligations of the Guarantors under this paragraph shall survive the payment in full of the Obligations and termination of this Guaranty.

3. Guarantors' Agreement to Pay Enforcement Costs, etc. The Guarantors further agree, as the principal obligors and not as guarantors only, to pay to the Purchasers, on demand, all out-of-pocket costs and expenses (including court costs and legal expenses) incurred or expended by the Purchasers in connection with the collection of the Obligations, this Guaranty and the enforcement thereof, together with interest on amounts recoverable under this §3 from the time when such amounts become due until payment, whether before or after judgment, at the rate of interest for overdue principal set forth in the Debentures, provided that if such interest exceeds the maximum amount permitted to be paid under applicable law, then such interest shall be reduced to such maximum permitted amount.

4. Waivers by Guarantors; Purchasers' Freedom to Act. The Guarantors agree that the Obligations will be paid and performed strictly in accordance with their respective terms to the maximum extent permitted by applicable law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Purchasers with respect thereto. The Guarantors waive promptness, diligence, presentment, demand, protest, notice of acceptance, notice of any Obligations incurred and all other notices of any kind, all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshalling of assets the Borrower or any other entity or other person primarily or secondarily liable with respect to any of the Obligations, and all suretyship defenses generally. Without limiting the generality of the foregoing, the Guarantors agree to the provisions of any instrument evidencing, securing or otherwise executed in connection with any Obligation and agrees that the joint and several obligations of the Guarantors hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (a) the failure of the Purchasers to assert any claim or demand or to enforce any right or remedy against the Borrower or any other entity or other person primarily or secondarily liable with respect to any of the Obligations; (b) any extensions, compromise, refinancing, consolidation or renewals of any Obligation; (c) any change in the time, place or manner of payment of any of the Obligations or any rescissions, waivers, compromise, refinancing, consolidation or other amendments or modifications of any of the terms or provisions of the SPA, the Debentures, the other Transaction Documents or any other agreement evidencing, securing or otherwise executed in connection with any of the Obligations; (d) the addition, substitution or release of any entity or other person primarily or secondarily liable for any Obligation; (e) the adequacy of any rights which the Purchasers may have against any collateral security or other means of obtaining repayment of any of the Obligations; (f) the impairment of any collateral securing any of the Obligations, including without limitation the failure to perfect or preserve any rights which the Purchasers might have in such collateral security or the substitution, exchange, surrender, release, loss or destruction of any such collateral security; or (g) any other act or omission which might in any manner or to any extent vary the risk of the Guarantors or otherwise operate as a release or discharge of the Guarantors, all of which may be done without notice to the Guarantors. To the fullest extent permitted by law, the Guarantors hereby expressly waives any and all rights or defenses arising by reason of (i) any "one action" or "anti-deficiency" law which would otherwise prevent the Purchasers from bringing any action, including any claim for a deficiency, or exercising any other right or remedy (including any right of set-off), against the Guarantors before or after the Purchasers' commencement or completion of any foreclosure action, whether judicially, by exercise of power of sale or otherwise, or (ii) any other law which in any other way would otherwise require any election of remedies by the Purchasers.

5. Unenforceability of Obligations Against Borrower. If for any reason of the Borrower, the Guarantors have no legal existence or is under no legal obligation to discharge any of the Obligations, or if any of the Obligations have become irrecoverable from the Borrower, the Guarantors by reason of the Borrower's, such Guarantors' insolvency, bankruptcy or reorganization or by other operation of law or for any other reason, this Guaranty shall nevertheless be binding on the Guarantors to the same extent as if the Guarantors at all times had been the principal obligors on all such Obligations. In the event that acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower or the Guarantors, or for any other reason, all such amounts otherwise subject to acceleration under the terms of the SPA, the Debentures, the other Transaction Documents or any other agreement evidencing, securing or otherwise executed in connection with any Obligation shall be immediately due and payable by the Guarantors.

6. Subrogation; Subordination.

6.1. Waiver of Rights Against Borrower. Until the final payment and performance in full of all of the Obligations, the Guarantors shall not exercise, and the Guarantors hereby waive, any rights against the Borrower arising as a result of payment by the Guarantors hereunder, by way of subrogation, reimbursement, restitution, contribution or otherwise, and will not prove any claim in competition with the Purchasers in respect of any payment hereunder in any bankruptcy, insolvency or reorganization case or proceedings of any nature; the Guarantors will not claim any setoff, recoupment or counterclaim against the Borrower in respect of any liability of the Guarantors to the Borrower; and the Guarantors waive any benefit of and any right to participate in any collateral security which may be held by the Purchasers.

6.2. Subordination. The payment of any amounts due with respect to any indebtedness of the Borrower for money borrowed or credit received now or hereafter owed to the Guarantors by the Borrower are hereby subordinated to the prior payment in full of all of the Obligations. The Guarantors agree that, after the occurrence and during the continuance of any default in the payment of any of the Obligations or upon the occurrence and continuation of any other Event of Default, the Guarantors will not demand, sue for or otherwise attempt to collect any such indebtedness of the Borrower to the Guarantors until all of the Obligations shall have been paid in full. If, notwithstanding the foregoing sentence, the Guarantors shall collect, enforce or receive any amounts in respect of such indebtedness while any Obligations are still outstanding, such amounts shall be collected, enforced and received by the Guarantors as trustees for the Purchasers and be paid over to the Purchasers on account of the Obligations without affecting in any manner the liability of the Guarantor under the other provisions of this Guaranty.

6.3. Provisions Supplemental. The provisions of this §6 shall be supplemental to and not in derogation of any rights and remedies of the Purchasers under any separate subordination agreement which the Purchasers may at any time and from time to time enter into with the Guarantors.

7. Security; Setoff. The Guarantors grant to the Purchasers, as security for the full and punctual payment and performance of all of the Guarantors' obligations hereunder, a continuing lien on and security interest in all securities or other property belonging to the Guarantors now or hereafter held by the Purchasers and in all deposits (general or special, time or demand, provisional or final) and other sums credited by or due from the Purchasers to the Guarantors or subject to withdrawal by the Guarantors. Regardless of the adequacy of any collateral security or other means of obtaining payment of any of the Obligations, the Purchasers are hereby authorized at any time and from time to time, without notice to the Guarantors (any such notice being expressly waived by the Guarantors) and to the fullest extent permitted by law, to set off and apply such deposits and other sums against the obligations of the Guarantors under this Guaranty, whether or not the Purchasers shall have made any demand under this Guaranty and although such obligations may be contingent or unmatured.

8. Further Assurances. The Guarantors agree that it will from time to time, at the request of the Purchasers, do all such things and execute all such documents as the Purchasers may reasonably request and consider necessary or desirable to give full effect to this Guaranty and to perfect and preserve the rights and powers of the Purchasers hereunder. The Guarantors acknowledge and confirms that the Guarantors themselves have established their own adequate means of obtaining from the Borrower on a continuing basis all information desired by the Guarantors concerning the financial condition of the Borrower and that the Guarantors will look to the Borrower and not to the Purchasers in order for the Guarantors to keep adequately informed of changes in the Borrower's financial condition.

9. Termination; Reinstatement. This Guaranty shall remain in full force and effect until the Purchasers are given written notice of the Guarantors' intention to discontinue this Guaranty with respect to the Guarantors, notwithstanding any intermediate or temporary payment or settlement of the whole or any part of the Obligations. No such notice shall be effective unless received by the Purchasers at the address of Purchasers for notices set forth in the SPA. No such notice shall affect any rights of the Purchasers hereunder, including without limitation the rights set forth in §§4 and 6, with respect to any Obligations incurred or accrued prior to the receipt of such notice or any Obligations incurred or accrued pursuant to any contract or commitment in existence prior to such receipt. This Guaranty shall continue to be effective or be reinstated, notwithstanding any such notice, if at any time any payment made or value received with respect to any Obligation is rescinded or must otherwise be returned by the Purchasers upon the insolvency, bankruptcy or reorganization of the Borrower, or otherwise, all as though such payment had not been made or value received.

10. Successors and Assigns. This Guaranty shall be binding upon the Guarantors, their successors and assigns, and shall inure to the benefit of the Purchasers and their successors, transferees and assigns. Without limiting the generality of the foregoing sentence, the Purchasers may assign or otherwise transfer any Transaction Document or any other agreement or note held by them evidencing, securing or otherwise executed in connection with the Obligations, or sell participations in any interest therein, to any other entity or other person, and such other entity or other person shall thereupon become vested, to the extent set forth in the agreement evidencing such assignment, transfer or participation, with all the rights in respect thereof granted to the Purchasers herein, all in accordance with, and subject to, the SPA and the Debentures. The Guarantors may not assign any of their obligations hereunder.

11. Amendments and Waivers. No amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantors therefrom shall be effective unless the same shall be in writing and signed by the Purchasers. No failure on the part of the Purchasers to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

12. Notices. All notices and other communications called for hereunder shall be made in writing and, unless otherwise specifically provided herein, shall be deemed to have been duly made or given when made or given in accordance with the procedures set forth in the SPA and addressed as follows: if to the Guarantors, at the address set forth beneath its signature hereto, and if to the Purchasers, at the address for notices to the Purchasers set forth in the SPA, or at such address as either party may designate in writing to the other.

13. Governing Law; Consent to Jurisdiction. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. The Guarantors agree that any suit for the enforcement of this Guaranty may be brought in the courts of the STATE OF NEW YORK sitting in the Borough of Manhattan or, to the extent permitted by applicable law, any federal court for the Southern District of New York (and appellate courts thereof) and consents to the nonexclusive jurisdiction of such court and to service of process in any such suit being made upon the Guarantors by mail at the address specified by reference in §12. The Guarantors hereby waive any objection that they may now or hereafter have to the venue of any such suit or any such court or that such suit was brought in an inconvenient court.

14. Waiver of Jury Trial. THE GUARANTORS HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS GUARANTY, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY OF SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, the Guarantors hereby waive any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Guarantors (i) certify that neither the Purchasers nor any representative, agent or attorney of the Purchasers have represented, expressly or otherwise, that the Purchasers would not, in the event of litigation, seek to enforce the foregoing waivers and (ii) acknowledges that, in entering into the SPA, the Debentures and the other Transaction Documents to which the Purchasers are a party, the Purchasers are relying upon, among other things, the waivers and certifications contained in this §14.

15. Miscellaneous. This Guaranty constitutes the entire agreement of the Guarantors with respect to the matters set forth herein. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by law or any other agreement, and this Guaranty shall be in addition to any other guaranty of or collateral security for any of the Obligations. The invalidity or unenforceability of any one or more sections of this Guaranty shall not affect the validity or enforceability of its remaining provisions. Captions are for the ease of reference only and shall not affect the meaning of the relevant provisions. The meanings of all defined terms used in this Guaranty shall be equally applicable to the singular and plural forms of the terms defined.

16. Effectiveness. Delivery of an executed signature page of this Guaranty by facsimile transmission or by email with a PDF attachment shall be effective as delivery of a manually executed counterpart hereof. This Guaranty and the other Transaction Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, the Guarantors have caused this Guaranty to be executed and delivered as of the date first above written.

MAJESTIC WORLD HOLDINGS, LLC

By: /s/ Nicolai Brune
Title: Manager

NORMAN BERRY II OWNER LLC

By: /s/ Nicolai Brune
Title: Manager

LV PENINSULA HOLDING, LLC

By: /s/ Nicolai Brune
Title: Manager

MYVONIA INNOVATIONS LLC

By: /s/ Nicolai Brune
Title: Manager

XENEHOME, LLC

By: /s/ Nicolai Brune
Title: Manager

[Signature Page to Subsidiary Guaranty]

XENETITLE, LLC

By: /s/ Nicolai Brune
Title: Manager

XENEAPP, LLC

By: /s/ Nicolai Brune
Title: Manager

[Signature Page to Subsidiary Guaranty]

Exhibit 10.5

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement"), dated as of August 12, 2024, is made by and between **ARENA BUSINESS SOLUTIONS GLOBAL SPC II, LTD** (the "Investor"), and **SAFE AND GREEN DEVELOPMENT CORPORATION**, a Delaware corporation (the "Company").

WHEREAS, the parties desire that, upon the terms and subject to the conditions contained herein, the Company shall have the right to issue and sell to the Investor, from time to time as provided herein, and the Investor shall purchase from the Company, up to $50.00 million of the Company's shares of common stock, par value $0.001 per share (the "Common Shares"); and

WHEREAS, the Common Shares are listed for trading on the Nasdaq Capital Market under the symbol "SGD"; and

WHEREAS, the offer and sale of the Common Shares issuable hereunder will be made in reliance upon Section 4(a)(2) under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act"), or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the transactions to be made hereunder.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

"Advance" shall mean the portion of the Commitment Amount requested by the Company in an Advance Notice.

"Advance Date" shall mean the 1st Trading Day after expiration of the applicable Pricing Period for each Advance.

"Advance Halt" shall have the meaning set forth in Section 2.05(d).

"Advance Notice" shall mean a written notice in the form of Exhibit A attached hereto to the Investor executed by an officer of the Company or other authorized representative of the Company identified on Schedule 1 hereto and setting forth the amount of an Advance that the Company desires to issue and sell to the Investor.

"Advance Notice Date" shall mean each date the Company delivers (in accordance with Section 2.02 of this Agreement) to the Investor an Advance Notice, subject to the terms of this Agreement.

"Affiliate" shall have the meaning set forth in Section 3.07.

"Agreement" shall have the meaning set forth in the preamble of this Agreement.

"Applicable Laws" shall mean all applicable laws, statutes, rules, regulations, orders, executive orders, directives, policies, guidelines and codes having the force of law, whether local, national, or international, as amended from time to time, including without limitation (i) all applicable laws that relate to money laundering, terrorist financing, financial record keeping and reporting, (ii) all applicable laws that relate to anti-bribery, anti-corruption, books and records and internal controls, including the United States Foreign Corrupt Practices Act of 1977, and (iii) any Sanctions laws.

"Bankruptcy Law" means Title 11, U.S. Code, or any similar federal, state or similar laws for the relief of debtors.

"Black Out Period" shall have the meaning set forth in Section 6.02.

"Business Day" means any day on which the Principal Market or Trading Market is open for trading, including any day on which the Principal Market or Trading Market is open for trading for a period of time less than the customary time.

"Buy-In" shall have the meaning set forth in Section 2.06.

"Buy-In Price" shall have the meaning set forth in Section 2.06.

"Closing" shall have the meaning set forth in Section 2.05.

"Commitment Amount" shall mean $50.00 million of Common Shares, *provided that*, the Company shall not effect any sales under this Agreement and the Investor shall not have the obligation to purchase Common Shares under this Agreement to the extent (but only to the extent) that after giving effect to such purchase and sale the aggregate number of Common Shares issued under this Agreement would exceed 19.99% of the outstanding Common Shares as of the date of this Agreement (the "Exchange Cap"); *provided further that*, the Exchange Cap will not apply if the Company obtains Shareholder Approval (as defined in the Securities Purchase Agreement).

"Commitment Fee Shares" shall have the meaning set forth in Section 13.04.

"Commitment Period" shall mean the period commencing on the date hereof and expiring upon the date of termination of this Agreement in accordance with Section 11.02.

"Common Shares" shall have meaning set forth in the recitals of this Agreement.

"Company" shall have the meaning set forth in the preamble of this Agreement.

"Company Indemnitees" shall have the meaning set forth in Section 5.02.

"Condition Satisfaction Date" shall have the meaning set forth in Section 7.01.

"Conversion Cap" means a number of Common Shares equal to 19.99% of the number of shares of Common Stock outstanding as of the date hereof calculated in accordance with the listing standards and rules of the Nasdaq Stock Market, including Rule 5635(d) (or any successor provisions thereof). For the avoidance of doubt, once Shareholder Approval is obtained, the Conversion Cap shall cease to exist.

"Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

"DTC" means the Depository Trust Company.

"DWAC Shares" means the Commitment Fee Shares or the Common Shares acquired or purchased by the Investor pursuant to this Agreement (a) that the Investor has resold in a manner described under the caption "Plan of Distribution" in the Registration Statement and otherwise in compliance with this Agreement before the delivery of the Transfer Agent Confirmation regarding the resale of such Commitment Fee Shares or Common Shares (as applicable) in accordance with this Agreement, and (b) about which the Investor has (i) delivered to the Company and the transfer agent to the Company (A) the Transfer Agent Confirmation relating to such Commitment Fee Shares or Common Shares (as applicable) and (B) a customary representation letter from the Investor, and, if requested by the transfer agent, its broker, confirming, among other things, the resale of such Commitment Fee Shares or Common Shares (as applicable) in the manner described in clause (a) of this definition of DWAC Shares (including confirmation of compliance with any relevant prospectus delivery requirements), and (ii) delivered to the transfer agent instructions for the delivery of such Commitment Fee Shares or Common Shares (as applicable) to the account with DTC of the Investor's designated broker-dealer as specified in the Transfer Agent Deliverables, which Commitment Fee Shares or Common Shares (as applicable) will be in the hands of the persons who purchase such Commitment Fee Shares or Common Shares (as applicable) from the Investor in the manner described in clause (a) of this definition of DWAC Shares, freely tradable and transferable without restriction on resale and without stop transfer instructions maintained against the transfer thereof.

"Environmental Laws" shall have the meaning set forth in Section 4.08.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exchange Cap" has the meaning set forth in the definition of "Commitment Amount".

"Hazardous Materials" shall have the meaning set forth in Section 4.08.

"Indemnified Liabilities" shall have the meaning set forth in Section 5.01.

"Investor" shall have the meaning set forth in the preamble of this Agreement.

"Investor Indemnitees" shall have the meaning set forth in Section 5.01.

"Market Price" shall mean the VWAP of the Common Shares during the Pricing Period.

"Material Adverse Effect" shall mean any event, occurrence or condition that has had or would reasonably be expected to have (i) a material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated herein, (ii) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement.

"Material Outside Event" shall have the meaning set forth in Section 6.08.

"Maximum Advance Amount" shall be calculated as follows: (a) if the Advance Notice is received by 8:30 a.m. Eastern Time, the lower of: (i) an amount equal to seventy percent (70%) of the average of the Daily Value Traded of the Common Shares on the ten (10) Trading Days immediately preceding an Advance Notice, or (ii) $20 million, (b) if the Advance Notice is received after 8:30 a.m. Eastern Time but prior to 10:30 a.m. Eastern Time, the lower of (i) an amount equal to forty percent (40%) of the average of the Daily Value Traded of Common Shares on the ten (10) Trading Days immediately preceding an Advance Notice, or (ii) $15 million, and (c) if the Advance Notice is received after 10:30 a.m. Eastern Time but prior to 12:30 p.m. Eastern Time, the lower of (i) an amount equal to twenty percent (20%) of the average of the Daily Value Traded of Common Shares on the ten (10) Trading Days immediately preceding an Advance Notice, or (ii) $10 million; provided, however, that the parties hereto may modify the aforementioned conditions by mutual prior written consent. For purposes hereof, "Daily Value Traded" is the product obtained by multiplying the daily trading volume of the Company's Common Shares on the Principal Market or Trading Market during regular trading hours as reported by Bloomberg L.P., by the VWAP for such Trading Day. For the avoidance of doubt, the daily trading volume shall include all trades on the Principal Market or Trading Market during regular trading hours.

"OFAC" shall mean the U.S. Department of Treasury's Office of Foreign Asset Control.

"Ownership Limitation" shall have the meaning set forth in Section 2.04(a).

"Person" shall mean an individual, a corporation, a partnership, a limited liability company, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Plan of Distribution" shall mean the section of a Registration Statement disclosing the plan of distribution of the Common Shares.

"Pricing Period" shall mean one (1) Trading Day, as notified by the Company to the Investor in the applicable Advance Notice, commencing on the Advance Notice Date.

"Principal Market" shall mean the Nasdaq Capital Market.

"Purchase Price" shall mean the price per Share obtained by multiplying the Market Price by 96%. If the total day's VWAP at the end of any given 1-hour interval has changed by +/- 4% versus the previous 1-hour interval, the Purchase Price will be 96.0% of the Investor's sale execution for that day. The last 30 minutes of trading on a Trading Day will count as the final "1-hour" interval of such Trading Day.

"Registrable Securities" shall mean (i) the Common Shares, (ii) the Commitment Fee Shares, and (iii) any securities issued or issuable with respect to any of the foregoing by way of exchange, stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise.

"Registration Limitation" shall have the meaning set forth in Section 2.04(b).

"Registration Statement" shall mean a registration statement on Form S-1 or Form S-3 or on such other form promulgated by the SEC for which the Company then qualifies and which counsel for the Company shall deem appropriate, and which form shall be available for the registration of the resale by the Investor of the Registrable Securities under the Securities Act.

"Regulation D" shall mean the provisions of Regulation D promulgated under the Securities Act.

"Required Delivery Date" means any date on which the Company or its transfer agent is required to deliver Common Shares to Investor hereunder.

"Sanctions" means any sanctions administered or enforced by OFAC, the U.S. State Department, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority.

"Sanctions Programs" means any OFAC economic sanction program (including, without limitation, programs related to Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"SEC" shall mean the U.S. Securities and Exchange Commission.

"SEC Documents" shall have the meaning set forth in Section 4.04.

"Securities Act" shall have the meaning set forth in the recitals of this Agreement.

"Securities Purchase Agreement" has the meaning set forth in Section 2.04(c).

"Settlement Document" shall have the meaning set forth in Section 2.05(a).

"Shares" shall mean the Commitment Fee Shares, and the Common Shares to be issued from time to time hereunder pursuant to an Advance.

"Subsidiaries" shall have the meaning set forth in Section 4.01.

"Trading Day" shall mean any day during which the Principal Market or Trading Market shall be open for business.

"Trading Market" shall mean the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, or the NYSE Euronext, whichever is at the time the principal trading exchange or market for the Common Shares.

"Transaction Documents" shall have the meaning set forth in Section 4.02.

"Transfer Agent Confirmation" shall have the meaning set forth in Section 2.05(b).

"Transfer Agent Deliverables" shall have the meaning set forth in Section 2.05(b).

"VWAP" means, for any Trading Day, the daily volume weighted average price of the Common Shares for such Trading Day on the Principal Market or Trading Market (a) from 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time, excluding the opening price and the closing price, if the Advance Notice is received before 8:30 a.m. Eastern Time, (b) from 11:00 a.m. Eastern Time through 4:00 p.m. Eastern Time, excluding the opening price and the closing price, if the Advance Notice is received after 8:30 a.m. Eastern Time and before 10:30 a.m. Eastern Time and (c) from 1:00 p.m. Eastern Time through 4:00 p.m. Eastern Time, excluding the opening price and the closing price, if the Advance Notice is received after 10:30 a.m. Eastern Time and before 12:30 p.m. Eastern Time and (each, the "Measurement Period"); provided, however for both (a) and (b) above, upon an Advance Halt the VWAP calculation shall terminate as of the effective time of the Material Outside Event.

ARTICLE II
ADVANCES

Section 2.01 Advances; Mechanics. Subject to the terms and conditions of this Agreement (including, without limitation, the provisions of Article VII hereof), the Company at its sole and exclusive option, may issue and sell to the Investor, and the Investor shall purchase from the Company, Common Shares on the following terms.

Section 2.02 Advance Notice. At any time during the Commitment Period, the Company may require the Investor to purchase Common Shares by delivering an Advance Notice to the Investor, subject to the conditions set forth in Section 7.01, and in accordance with the following provisions:

(a) The Company shall, in its sole discretion, select the amount of the Advance, not to exceed the Maximum Advance Amount, it desires to issue and sell to the Investor in each Advance Notice and the time it desires to deliver each Advance Notice.

(b) There shall be no mandatory minimum Advances and no non-usages fee for not utilizing the Commitment Amount or any part thereof.

(c) The Company shall be limited to delivering one (1) Advance Notice to Investor per Trading Day.

(d) The Advance Notice shall be valid upon delivery to Investor in accordance with Exhibit C.

Section 2.03 Date of Delivery of Advance Notice. An Advance Notice shall be deemed delivered on the day it is received by the Investor if such notice is received by email prior to 12:30 p.m. Eastern Time (or later if waived by the Investor in its sole discretion) in accordance with the instructions set forth on Exhibit C.

Section 2.04 Advance Limitations. Regardless of the amount of an Advance requested by the Company in the Advance Notice, the final amount of an Advance pursuant to an Advance Notice shall be reduced in accordance with each of the following limitations:

(a) Ownership Limitation; Commitment Amount. In no event shall the number of Common Shares issuable to the Investor pursuant to an Advance cause the aggregate number of Shares beneficially owned (as calculated pursuant to Section 13(d) of the Exchange Act) by the Investor and its Affiliates as a result of previous issuances and sales of Common Shares to Investor under this Agreement to exceed 9.99% of the then outstanding Common Shares (the "Ownership Limitation"). In connection with each Advance Notice delivered by the Company, any portion of an Advance that would (i) cause the Investor to exceed the Ownership Limitation or (ii) cause the aggregate number of Common Shares issued and sold to the Investor hereunder to exceed the Commitment Amount shall automatically be withdrawn with no further action required by the Company, and such Advance Notice shall be deemed automatically modified to reduce the amount of the Advance requested by an amount equal to such withdrawn portion; provided that in the event of any such automatic withdrawal and automatic modification, Investor will promptly notify the Company of such event.

(b) Registration Limitation. In no event shall an Advance exceed the amount registered under the Registration Statement then in effect (the "Registration Limitation") or the Exchange Cap to the extent applicable. In connection with each Advance Notice, any portion of an Advance that would exceed the Registration Limitation or Exchange Cap shall automatically be withdrawn with no further action required by the Company and such Advance Notice shall be deemed automatically modified to reduce the aggregate amount of the requested Advance by an amount equal to such withdrawn portion in respect of each Advance Notice; provided that in the event of any such automatic withdrawal and automatic modification, Investor will promptly notify the Company of such event.

(c) Principal Market Regulation. The Company shall not effect any sales of Common Shares under this Agreement and the Investor shall not have the obligation to purchase Common Shares under this Agreement to the extent (but only to the extent) that after giving effect to such purchase and sale the aggregate number of Common Shares issued under this Agreement including the Commitment Fee Shares, plus the Common Shares issued pursuant to that certain securities purchase agreement entered into by the Company and Investor on or around the date of this Agreement (the "Securities Purchase Agreement"), Common Shares issued pursuant to the Debentures (as defined in the Securities Purchase Agreement), and Common Shares issued pursuant to the Warrants (as defined in the Securities Purchase Agreement) would exceed the Conversion Cap, subject to appropriate adjustment for any stock dividend, stock split, stock combination, rights offerings, reclassification or similar transaction that proportionately decreases or increases the Common Shares until the Shareholder Approval (as defined the Securities Purchase Agreement) has been obtained by the Company. For the avoidance of any doubt, this prohibition shall not apply to the issuance of the Commitment Fee Shares, which the parties hereto acknowledge shall be first in priority of issuance above all other securities issuable pursuant to the aforementioned transaction documents.

(d) Notwithstanding any other provision in this Agreement, the Company and the Investor acknowledge and agree that upon the Investor's receipt of a valid Advance Notice the parties shall be deemed to have entered into an unconditional contract binding on both parties for the purchase and sale of Common Shares pursuant to such Advance Notice in accordance with the terms of this Agreement and subject to Applicable Law and Section 3.08 (Trading Activities), the Investor may sell Common Shares during the Pricing Period.

Section 2.05 Closings. The closing of each Advance and each sale and purchase of Common Shares related to each Advance (each, a "Closing") shall take place as soon as practicable on or after each Advance Date in accordance with the procedures set forth below. The parties acknowledge that the Purchase Price is not known at the time the Advance Notice is delivered (at which time the Investor is irrevocably bound) but shall be determined on each Closing based on the daily prices of the Common Shares that are the inputs to the determination of the Purchase Price as set forth further below. In connection with each Closing, the Company and the Investor shall fulfill each of its obligations as set forth below:

(a) On each Advance Date, the Investor shall deliver to the Company a written document, in the form attached hereto as Exhibit B (each a "Settlement Document"), setting forth the final number of Common Shares to be purchased by the Investor (taking into account any adjustments pursuant to Section 2.04), the Market Price, the Purchase Price, the aggregate proceeds to be paid by the Investor to the Company, and a report by Bloomberg, L.P. indicating the VWAP for each of the Trading Days during the Pricing Period (or, if not reported on Bloomberg, L.P., another reporting service reasonably agreed to by the parties), in each case in accordance with the terms and conditions of this Agreement.

(b) Promptly after receipt of the Settlement Document with respect to each Advance (and, in any event, not later than one (1) Trading Days after such receipt), the Company will, or will cause its transfer agent to, issue in the Investor's name in a DRS account or accounts at the transfer agent all Common Shares purchased by Investor pursuant to such Advance. Such Common Shares shall constitute "restricted securities" as such term is defined in Rule 144(a)(3) under the Securities Act and the certificate or book-entry statement representing such Shares shall bear the restrictive legend under the Securities Act set forth in Section 9.1(iii). Notwithstanding the foregoing, if the Investor has resold the Common Shares in a manner described under the caption "Plan of Distribution" in the Registration Statement and otherwise in compliance with this Agreement prior to the delivery by the Investor to the Company of the Settlement Document, the Investor shall concurrently with the delivery by the Investor to the Company of such Settlement Document (i) send a confirmation to the transfer agent setting forth the number of such Common Shares that have been so resold and the date of such resales (such confirmation, the "Transfer Agent Confirmation") and (ii) deliver to the transfer agent the items set forth in clause (b) of the definition of DWAC Shares with respect to such resold Common Shares and such other items as the transfer agent may reasonably request (collectively, the "Transfer Agent Deliverables"). With respect to Common Shares or Commitment Fee Shares resold by the Investor as described in the preceding sentence and as to which the Investor has timely delivered the Transfer Agent Deliverables with respect to such resold Common Shares or Commitment Fee Shares, such securities shall be delivered and credited by the transfer agent using the Fast Automated Securities Transfer (FAST) Program maintained by DTC (or any similar program hereafter adopted by DTC performing substantially the same function) to the account with DTC of the Investor's designated Broker-Dealer as specified in the Transfer Agent Deliverables with respect to such resold securities at the time such securities would otherwise have been required to be delivered to the Investor in accordance with this Agreement, which securities (x) shall only be used by the Investor's Broker-Dealer to deliver such securities to DTC for the purpose of settling the Investor's share delivery obligations with respect to the sale of such Common Shares or Commitment Fee Shares (as applicable), which may include delivery to other accounts of such Broker-Dealer and inclusion in the number of Common Shares or Commitment Fee Shares delivered by that Broker-Dealer in "net settling" that Broker-Dealer's trading of shares of the Company's Common Shares, including its positions with the Broker-Dealers of the respective persons who purchase such securities from the Investor, and (y) shall remain "restricted securities" as such term is defined in Rule 144(a)(3) under the Securities Act until so delivered. The Company and the Investor acknowledge that, if and when the Investor has (i) resold Commitment Fee Shares or Common Shares in a manner described under the caption "Plan of Distribution" in the Registration Statement and otherwise in compliance with this Agreement and (ii) timely delivered the Transfer Agent Deliverables with respect to such resold Commitment Fee Shares or Common Shares (as applicable), the transfer agent shall cause such resold Commitment Fee Shares or Common Shares (as applicable) to be subsequently credited using the Fast Automated Securities Transfer (FAST) Program maintained by DTC (or any similar program hereafter adopted by DTC performing substantially the same function) to the account with DTC of the Investor's designated Broker-Dealer as specified in the Transfer Agent Deliverables with respect to such resold Commitment Fee Shares or Common Shares (as applicable), which Commitment Fee Shares or Common Shares (as applicable) (x) shall only be used by the Investor's Broker-Dealer to deliver such resold Commitment Fee Shares or Common Shares (as applicable) to DTC for the purpose of settling the Investor's share delivery obligations with respect to the sale of such Common Shares or Commitment Fee Shares (as applicable), which may include delivery to other accounts of such Broker-Dealer and inclusion in the number of securities delivered by that Broker-Dealer in "net settling" that Broker-Dealer's trading of shares of the Company's Common Shares, including its positions with the Broker-Dealers of the respective persons who purchase such Commitment Shares or Shares (as applicable) from the Investor, and (y) shall remain "restricted securities" as such term is defined in Rule 144(a)(3) under the Securities Act until so delivered. The Company and the Investor acknowledge that such resold Commitment Fee Shares or Common Shares (as applicable) credited to the account with DTC of the Investor's designated Broker-Dealer shall be eligible for transfer to the third-party purchasers of such Commitment Fee Shares or Common Shares or their respective Broker-Dealers as DWAC Shares. The Company and the Investor acknowledge that such resold Commitment Fee Shares or Common Shares (as applicable) credited to the account with DTC of the Investor's designated Broker-Dealer shall be eligible for transfer to the third-party purchasers of such Commitment Fee Shares or Common Shares or their respective Broker-Dealers as DWAC Shares. The Company shall promptly notify Investor if it has reasonable grounds to dispute the calculations set forth in the Settlement Document, and the Company agrees that such calculations shall be deemed agreed upon and final upon transfer of the Common Shares. Promptly upon receipt of such notification (in any event, not later than three (3) Trading Days after such receipt), the Investor shall pay to the Company the aggregate purchase price of the Common Shares (as set forth in the Settlement Document) in cash in immediately available funds to an account designated by the Company in writing and transmit notification to the Company that such funds transfer has been requested. No fractional shares shall be issued, and any fractional amounts shall be rounded to the next higher whole number of shares.

(c) On or prior to the Advance Date, each of the Company and the Investor shall deliver to the other all documents, instruments and writings expressly required to be delivered by either of them pursuant to this Agreement in order to implement and effect the transactions contemplated herein.

(d) Notwithstanding anything to the contrary in this Agreement, if on any day during the Pricing Period (i) the Company notifies Investor that a Material Outside Event set forth in Section 6.08(i) through (v) has occurred or if the Material Outside Event set forth in Sections 6.08(vi) or (vii) shall have occurred, or (ii) the Company notifies the Investor of a Black Out Period, the parties agree that the pending Advance shall end (the "Advance Halt") and the final number of Common Shares to be purchased by the Investor at the Closing for such Advance shall be equal to the number of Common Shares sold by the Investor during the applicable Pricing Period prior to the notification from the Company of a Material Outside Event or Black Out Period.

Section 2.06 Failure to Timely Deliver.

(a) If on or prior to the Required Delivery Date either (I) if the transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, the Company shall fail to issue and deliver a certificate to Investor and register such Common Shares on the Company's share register or, if the transfer agent is participating in the DTC Fast Automated Securities Transfer Program, credit the balance account of Investor or Investor's designee with DTC for the number of Common Shares to which Investor submitted for legend removal by Investor pursuant to clause (ii) below or otherwise or (II) if the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program, the transfer agent fails to credit the balance account of Investor or Investor's designee with DTC for any Common Shares submitted for legend removal by Investor, in each case, if and only if the Investor has delivered the Transfer Agent Deliverables in accordance with the requirements of Section 2.05(b) above, and the Company fails to promptly, but in no event later than one (1) Business Day (x) so notify Investor and (y) deliver the Common Shares electronically without any restrictive legend in accordance with the requirements of Section 2.05(b) above, and if on or after such Trading Day Investor purchases (in an open market transaction or otherwise) Common Shares to deliver in satisfaction of a sale by Investor of Common Shares submitted for legend removal by Investor that Investor is entitled to receive from the Company (a "Buy-In"), then the Company shall, within one (1) Business Day after Investor's request and in Investor's discretion, either (i) pay cash to Investor in an amount equal to Investor's total purchase price (including brokerage commissions, borrow fees and other out-of-pocket expenses, if any, for the Common Shares so purchased) (the "Buy-In Price"), at which point the Company's obligation to so deliver such certificate or credit Investor's balance account shall terminate and such shares shall be cancelled, or (ii) promptly honor its obligation to so deliver to Investor a certificate or certificates or credit the balance account of Investor or Investor's designee with DTC representing such number of Common Shares that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to Investor in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Common Shares that the Company was required to deliver to Investor by the Required Delivery Date multiplied by (B) the price at which Investor sold such Common Shares in anticipation of the Company's timely compliance with its delivery obligations hereunder. Nothing shall limit Investor's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Common Shares (or to electronically deliver such Common Shares) as required pursuant to the terms hereof.

(b) In the event the Investor sells Common Shares after receipt of an Advance Notice and the Company fails to perform its obligations as mandated in Section 2.05, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Article V hereto and in addition to any other remedy to which the Investor is entitled at law or in equity, including, without limitation, specific performance, it will hold the Investor harmless against any loss, claim, damage, or expense (including, without limitation, all brokerage commissions, borrow fees, legal fees and expenses and all other related out-of-pocket expenses), as incurred, arising out of or in connection with such default by the Company and acknowledges that irreparable damage may occur in the event of any such default. It is accordingly agreed that the Investor shall be entitled to an injunction or injunctions to prevent such breaches of this Agreement and to specifically enforce (subject to the Securities Act and other rules of the Principal Market or Trading Market), without the posting of a bond or other security, the terms and provisions of this Agreement.

(c) In the event the Company provides an Advance Notice and the Investor fails to perform its obligations as mandated in Section 2.05, the Investor agrees that in addition to and in no way limiting the rights and obligations set forth in Article V hereto and in addition to any other remedy to which the Company is entitled at law or in equity, including, without limitation, specific performance, it will hold the Company harmless against any loss, claim, damage, or expense (including, without limitation, legal fees and expenses and all other related out-of-pocket expenses), as incurred, arising out of or in connection with such default by the Investor and acknowledges that irreparable damage may occur in the event of any such default. It is accordingly agreed that the Company shall be entitled to an injunction or injunctions to prevent such breaches of this Agreement and to specifically enforce (subject to the Securities Act and other rules of the Principal Market or Trading Market), without the posting of a bond or other security, the terms and provisions of this Agreement.

Section 2.07 Completion of Resale Pursuant to the Registration Statement. After the Investor has purchased the full Commitment Amount and has completed the subsequent resale of all of the Registrable Securities registered in the Registration Statement, Investor will notify the Company that all subsequent resales are completed and the Company will be under no further obligation to maintain the effectiveness of the Registration Statement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF INVESTOR

Investor hereby represents and warrants to, and agrees with, the Company that the following are true and correct as of the date hereof and as of each Advance Notice Date and each Advance Date:

Section 3.01 Organization and Authorization. The Investor is duly organized, validly existing and in good standing under the laws of the Cayman Islands and has all requisite power and authority to execute, deliver and perform this Agreement, including all transactions contemplated hereby. The decision to invest and the execution and delivery of this Agreement by the Investor, the performance by the Investor of its obligations hereunder and the consummation by the Investor of the transactions contemplated hereby have been duly authorized and require no other proceedings on the part of the Investor. The undersigned has the right, power and authority to execute and deliver this Agreement and all other instruments on behalf of the Investor or its shareholders. This Agreement has been duly executed and delivered by the Investor and, assuming the execution and delivery hereof and acceptance thereof by the Company, will constitute the legal, valid and binding obligations of the Investor, enforceable against the Investor in accordance with its terms.

Section 3.02 Evaluation of Risks. The Investor has such knowledge and experience in financial, tax and business matters as to be capable of evaluating the merits and risks of, and bearing the economic risks entailed by, an investment in the Common Shares of the Company and of protecting its interests in connection with the transactions contemplated hereby. The Investor acknowledges and agrees that its investment in the Company involves a high degree of risk, and that the Investor may lose all or a part of its investment.

Section 3.03 No Legal, Investment or Tax Advice from the Company. The Investor acknowledges that it had the opportunity to review this Agreement and the transactions contemplated by this Agreement with its own legal counsel and investment and tax advisors. The Investor is relying solely on such counsel and advisors and not on any statements or representations of the Company or any of the Company's representatives or agents for legal, tax, investment or other advice with respect to the Investor's acquisition of Common Shares hereunder, the transactions contemplated by this Agreement or the laws of any jurisdiction, and the Investor acknowledges that the Investor may lose all or a part of its investment.

Section 3.04 Investment Purpose. The Investor is acquiring the Common Shares for its own account, for investment purposes and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under or exempt from the registration requirements of the Securities Act; provided, however, that by making the representations herein, the Investor does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with, or pursuant to, a registration statement filed pursuant to this Agreement or an applicable exemption under the Securities Act. The Investor does not presently have any agreement or understanding, directly or indirectly, with any Person to sell or distribute any of the Common Shares. The Investor acknowledges that it will be disclosed as an "underwriter" and a "selling stockholder" in each Registration Statement and in any prospectus contained therein.

Section 305. Accredited Investor. The Investor is an "Accredited Investor" as that term is defined in Rule 501(a)(3) of Regulation D.

Section 3.06 Information. The Investor and its advisors (and its counsel), if any, have been furnished with all materials relating to the business, finances and operations of the Company and information the Investor deemed material to making an informed investment decision. The Investor and its advisors (and its counsel), if any, have been afforded the opportunity to ask questions of the Company and its management and have received answers to such questions. Neither such inquiries nor any other due diligence investigations conducted by such Investor or its advisors (and its counsel), if any, or its representatives shall modify, amend or affect the Investor's right to rely on the Company's representations and warranties contained in this Agreement. The Investor acknowledges and agrees that the Company has not made to the Investor, and the Investor acknowledges and agrees it has not relied upon, any representations and warranties of the Company, its employees or any third party other than the representations and warranties of the Company contained in this Agreement. The Investor understands that its investment involves a high degree of risk. The Investor has sought such accounting, legal and tax advice, as it has considered necessary to make an informed investment decision with respect to the transactions contemplated hereby.

Section 3.07 Not an Affiliate. The Investor is not an officer, director or a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the Company or any "affiliate" of the Company (as that term is defined in Rule 405 promulgated under the Securities Act).

Section 3.08 Trading Activities. The Investor's trading activities with respect to the Common Shares shall be in compliance with all applicable federal and state securities laws, rules and regulations and the rules and regulations of the Principal Market or Trading Market. Neither the Investor nor its affiliates has any open short position in the Common Shares, nor has the Investor entered into any hedging transaction that establishes a net short position with respect to the Common Shares, and the Investor agrees that it shall not, and that it will cause its affiliates not to, engage in any short sales or hedging transactions with respect to the Common Shares; provided that the Company acknowledges and agrees that upon receipt of an Advance Notice the Investor has the right to sell (a) the Common Shares to be issued to the Investor pursuant to the Advance Notice prior to receiving such Common Shares, or (b) other Common Shares issued or sold by the Company to Investor pursuant to this Agreement and which the Company has continuously held as a long position.

Section 3.09 General Solicitation. Neither the Investor, nor any of its affiliates, nor any person acting on its or their behalf, has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Common Shares by the Investor.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the SEC Documents, or in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or warranty otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules or in another Section of the Disclosure Schedules, to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is applicable to such Section, the Company represents and warrants to the Investor that, as of the date hereof and each Advance Notice Date (other than representations and warranties which address matters only as of a certain date, which shall be true and correct as written as of such certain date), that:

Section 4.01 Organization and Qualification. Each of the Company and its Subsidiaries (as defined below) is an entity duly organized and validly existing under the laws of its state of organization or incorporation, and has the requisite power and authority to own its properties and to carry on its business as now being conducted. Each of the Company and its Subsidiaries is duly qualified to do business and is in good standing (to the extent applicable) in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect. The Company's Subsidiaries means any Person (as defined below) in which the Company, directly or indirectly, (x) owns a majority of the outstanding capital stock or equity or similar interests of such Person or (y) controls or operates all or any part of the business, operations or administration of such Person provided that such Subsidiary is set forth on Schedule 4.01.

Section 4.02 Authorization, Enforcement, Compliance with Other Instruments. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Shares in accordance with the terms hereof and thereof. The execution and delivery by the Company of this Agreement and the other Transaction Documents, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Common Shares) have been or (with respect to consummation) will be duly authorized by the Company's board of directors and no further consent or authorization will be required by the Company, its board of directors or its shareholders (except as otherwise contemplated by this Agreement). This Agreement and the other Transaction Documents to which it is a party have been (or, when executed and delivered, will be) duly executed and delivered by the Company and, assuming the execution and delivery thereof and acceptance by the Investor, constitute (or, when duly executed and delivered, will be) the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or other laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "Transaction Documents" means, collectively, this Agreement and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

Section 4.03 No Conflict. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Common Shares) will not (i) result in a violation of the articles of incorporation or other organizational documents of the Company or its Subsidiaries (with respect to consummation, as the same may be amended prior to the date on which any of the transactions contemplated hereby are consummated), (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or its Subsidiaries or by which any property or asset of the Company or its Subsidiaries is bound or affected except, in the case of clause (ii) or (iii) above, to the extent such violations or conflicts would not reasonably be expected to have a Material Adverse Effect.

Section 4.04 SEC Documents; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the Exchange Act for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (all of the foregoing filed within the past two years preceding the date hereof or amended after the date hereof, or filed after the date hereof, and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein, and all registration statements filed by the Company under the Securities Act, being hereinafter referred to as the "SEC Documents"). The Company has made available to the Investor through the SEC's website at http://www.sec.gov, true and complete copies of the SEC Documents, and none of the SEC Documents, when viewed as a whole as of the date hereof, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates (or, with respect to any filing that has been amended or superseded, the date of such amendment or superseding filing), the SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as applicable, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents. As of their respective dates (or, with respect to any financial statements that have been amended or superseded, the date of such amended or superseding financial statements), the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the respective dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

Section 4.05 Equity Capitalization. As of the date hereof, the authorized capital of the Company consists of (A) 50,000,000 Common Shares, of which, 17,808,713 are issued and outstanding and 3,610,877 shares are reserved for issuance pursuant to Convertible Securities (as defined below) exercisable or exchangeable for, or convertible into, Common Shares and (B) 5,000,000 shares of preferred stock, par value $0.001 per share, of which none are issued and outstanding. 0 Common Shares are held in the treasury of the Company. "Convertible Securities" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Shares) or any of its Subsidiaries.[1]

Section 4.06 Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and rights, if any, necessary to conduct their respective businesses as now conducted, except as would not cause a Material Adverse Effect. The Company and its Subsidiaries have not received written notice of any infringement by the Company or its Subsidiaries of trademark, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, or trade secrets. To the knowledge of the Company, there is no claim, action or proceeding being made or brought against, or to the Company's knowledge, being threatened against the Company or its Subsidiaries regarding any material trademark, trade name, patents, patent rights, invention, copyright, license, service names, service marks, service mark registrations, trade secret or other infringement; and the Company is not aware of any facts or circumstances which might give rise to any of the foregoing.

Section 4.07 Employee Relations. Neither the Company nor any of its Subsidiaries is involved in any labor dispute nor, to the knowledge of the Company or any of its Subsidiaries, is any such dispute threatened, in each case which is reasonably likely to cause a Material Adverse Effect.

Section 4.08 Environmental Laws. The Company and its Subsidiaries (i) have not received written notice alleging any failure to comply in all material respects with all Environmental Laws (as defined below), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) have not received written notice alleging any failure to comply with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "Environmental Laws" means all applicable federal, state and local laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

[1] Company to complete.

Section 4.09 Title. Except as would not cause a Material Adverse Effect and except as set forth on Schedule 4.09, the Company (or its Subsidiaries) have indefeasible fee simple or leasehold title to its properties and assets owned by it, free and clear of any pledge, lien, security interest, encumbrance, claim or equitable interest. Any real property and facilities held under lease by the Company and its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

Section 4.10 Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. The Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

Section 4.11 Regulatory Permits. Except as would not cause a Material Adverse Effect or as set forth on Schedule 4.11, the Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to own their respective businesses, and neither the Company nor any such Subsidiary has received any written notice of proceedings relating to the revocation or modification of any such certificate, authorization or permits.

Section 4.12 Internal Accounting Controls. 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 generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, and management is not aware of any material weaknesses that are not disclosed in the SEC Documents as and when required.

Section 4.13 Absence of Litigation. Except with respect to receipt of deficiency notices relating to Nasdaq delisting, which have been disclosed in the SEC Documents, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending against or affecting the Company, the Common Shares or any of the Company's Subsidiaries, wherein an unfavorable decision, ruling or finding would have a Material Adverse Effect.

Section 4.14 Subsidiaries. As of the date hereof, except as set forth on Schedule 4.14[2], the Company does not own or control, directly or indirectly, any interest in any other corporation, partnership, association or other business entity, except for the Subsidiaries and Excluded Subsidiaries.

Section 4.15 Tax Status. Except as would not have a Material Adverse Effect, each of the Company and its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. The Company has not received written notification any unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim where failure to pay would cause a Material Adverse Effect.

2 Company to confirm none

Section 4.16 Certain Transactions. Except as (i) set forth in the SEC Documents or (ii) not required to be disclosed pursuant to Applicable Law (including, for the avoidance of doubt, not yet required to be disclosed at the relevant time), none of the officers or directors of the Company is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer or director, or to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer or director has a substantial interest or is an officer, director, trustee or partner.

Section 4.17 Rights of First Refusal. Except as set forth on Schedule 4.17, the Company is not obligated to offer the Common Shares offered hereunder on a right of first refusal basis or otherwise to any third parties including, but not limited to, current or former shareholders of the Company, underwriters, brokers, agents or other third parties.

Section 4.18 Dilution. The Company is aware and acknowledges that the issuance of Common Shares hereunder could cause dilution to existing shareholders and could significantly increase the outstanding number of Common Shares.

Section 4.19 Acknowledgment Regarding Investor's Purchase of Shares. The Company acknowledges and agrees that the Investor is acting solely in the capacity of an arm's length investor with respect to this Agreement and the transactions contemplated hereunder. The Company further acknowledges that the Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereunder and any advice given by the Investor or any of its representatives or agents in connection with this Agreement and the transactions contemplated hereunder is merely incidental to the Investor's purchase of the Shares hereunder. The Company is aware and acknowledges that it shall not be able to request Advances under this Agreement if the Registration Statement is not effective or if any issuances of Common Shares pursuant to any Advances would violate any rules of the Principal Market or Trading Market.

Section 4.20 Sanctions Matters. Neither the Company, nor any Subsidiary of the Company, nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary of the Company, is a Person that is, or is owned or controlled by a Person that is on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC from time to time;

(a) the subject of any Sanctions; or

(b) has a place of business in, or is operating, organized, resident or doing business in a country or territory that is, or whose government is, the subject of Sanctions Programs (including without limitation Crimea, Cuba, Iran, North Korea, Sudan and Syria).

Section 4.21 DTC Eligibility. The Company, through the transfer agent, currently participates in the DTC Fast Automated Securities Transfer (FAST) Program and the Common Shares can be transferred electronically to third parties via the DTC Fast Automated Securities Transfer (FAST) Program.

ARTICLE V
INDEMNIFICATION

The Investor and the Company represent to the other the following with respect to itself:

Section 5.01 Indemnification by the Company. In consideration of the Investor's execution and delivery of this Agreement, and in addition to all of the Company's other obligations under this Agreement, the Company shall defend, protect, indemnify and hold harmless the Investor, its investment manager, and each of their respective officers, directors, managers, members, partners, employees and agents (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) and each 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 Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and reasonable and documented expenses in connection therewith (irrespective of whether any such Investor Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by the Investor Indemnitees or any of them as a result of, or arising out of, or relating to (a) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Shares as originally filed or in any amendment thereof, or in any related prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Investor specifically for inclusion therein; (b) any material misrepresentation or breach of any material representation or material warranty made by the Company in this Agreement or any other certificate, instrument or document contemplated hereby or thereby; or (c) any material breach of any material covenant, material agreement or material obligation of the Company contained in this Agreement or any other certificate, instrument or document contemplated hereby or thereby. To the extent that the foregoing undertaking by the Company may be unenforceable under Applicable Law, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities, which is permissible under Applicable Law.

Section 5.02 Indemnification by the Investor. In consideration of the Company's execution and delivery of this Agreement, and in addition to all of the Investor's other obligations under this Agreement, the Investor shall defend, protect, indemnify and hold harmless the Company and all of its officers, directors, shareholders, employees and agents (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) and each person who controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Company Indemnitees") from and against any and all Indemnified Liabilities incurred by the Company Indemnitees or any of them as a result of, or arising out of, or relating to (a) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Shares as originally filed or in any amendment thereof, or in any related prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that the Investor will only be liable for written information relating to the Investor furnished to the Company by or on behalf of the Investor specifically for inclusion in the documents referred to in the foregoing indemnity, and will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Investor by or on behalf of the Company specifically for inclusion therein; (b) any misrepresentation or breach of any representation or warranty made by the Investor in this Agreement or any instrument or document contemplated hereby or thereby executed by the Investor; or (c) any breach of any covenant, agreement or obligation of the Investor(s) contained in this Agreement or any other certificate, instrument or document contemplated hereby or thereby executed by the Investor. To the extent that the foregoing undertaking by the Investor may be unenforceable under Applicable Law, the Investor shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities, which is permissible under Applicable Law.

Section 5.03 Notice of Claim. Promptly after receipt by an Investor Indemnitee or Company Indemnitee of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Investor Indemnitee or Company Indemnitee, as applicable, shall, if a claim for an Indemnified Liability in respect thereof is to be made against any indemnifying party under this Article V, deliver to the indemnifying party a written notice of the commencement thereof; but the failure to so notify the indemnifying party will not relieve it of liability under this Article V except to the extent the indemnifying party is prejudiced by such failure. The indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually reasonably satisfactory to the indemnifying party and the Investor Indemnitee or Company Indemnitee, as the case may be; provided, however, that an Investor Indemnitee or Company Indemnitee shall have the right to retain its own counsel with the actual and reasonable third party fees and expenses of not more than one counsel for such Investor Indemnitee or Company Indemnitee to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Investor Indemnitee or Company Indemnitee and the indemnifying party would be inappropriate due to actual or potential differing interests between such Investor Indemnitee or Company Indemnitee and any other party represented by such counsel in such proceeding. The Investor Indemnitee or Company Indemnitee shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Investor Indemnitee or Company Indemnitee which relates to such action or claim. The indemnifying party shall keep the Investor Indemnitee or Company Indemnitee reasonably apprised as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Investor Indemnitee or Company Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Investor Indemnitee or Company Indemnitee of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Investor Indemnitee or Company Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The indemnification required by this Article V shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received and payment therefor is due, subject to receipt by the indemnifying party of an undertaking to repay any amounts that such party is ultimately not entitled to receive as indemnification pursuant to this Agreement.

Section 5.04 Remedies. The remedies provided for in this Article V are not exclusive and shall not limit any right or remedy which may be available to any indemnified person at law or equity. The obligations of the parties to indemnify or make contribution under this Article V shall survive expiration or termination of this Agreement.

Section 5.05 Limitation of Liability. Notwithstanding the foregoing, no party shall be entitled to recover from the other party for punitive, indirect, incidental or consequential damages.

ARTICLE VI
COVENANTS

Section 6.01 Registration Statement.

(a) Filing of a Registration Statement. No later than thirty (30) calendar days following the date hereof, the Company shall have prepared and filed with the SEC a Registration Statement for the resale by the Investor of Registrable Securities and shall file one or more additional Registration Statements for the resale by Investor of Registrable Securities if necessary. The Company acknowledges and agrees that it shall not have the ability to request any Advances until the effectiveness of a Registration Statement registering the applicable Registrable Securities for resale by the Investor. The Company and the Investor shall mutually agree on a good faith estimate of the number of Commitment Fee Shares which may be issuable pursuant to Section 13.04 for purposes of registration; provided, however, that in the event such estimated number of shares have been (i) underestimated, the Company shall use reasonable best efforts to register additional Commitment Fee Shares promptly after such underestimation is made known to the Company and (ii) overestimated, the Company shall treat (and disclose in the registration statement the same) such excess shares as Common Shares issuable and saleable to the Investor pursuant to Advances hereunder.

(b) Maintaining a Registration Statement. The Company shall use commercially reasonable efforts to maintain the effectiveness of any Registration Statement that has been declared effective at all times during the Commitment Period, provided, however, that if the Company has received notification pursuant to Section 2.07 that the Investor has completed resales pursuant to the Registration Statement for all of the Registrable Securities registered thereon, then the Company shall be under no further obligation to maintain the effectiveness of the Registration Statement. Notwithstanding anything to the contrary contained in this Agreement, the Company shall use commercially reasonable efforts to ensure that, when filed, each Registration Statement (including, without limitation, all amendments and supplements thereto) and the prospectus (including, without limitation, all amendments and supplements thereto) used in connection with such Registration Statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. During the Commitment Period, the Company shall notify the Investor promptly if (i) the Registration Statement shall cease to be effective under the Securities Act, (ii) the Common Shares shall cease to be authorized for listing on the Principal Market or Trading Market, (iii) the Common Shares cease to be registered under Section 12(b) or Section 12(g) of the Exchange Act or (iv) the Company fails to file in a timely manner all reports and other documents required of it as a reporting company under the Exchange Act.

(c) Filing Procedures. Not less than one business day prior to the filing of a Registration Statement and not less than one business day prior to the filing of any related amendments and supplements to any Registration Statements (except for any amendments or supplements caused by the filing of any annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any similar or successor reports), the Company shall furnish to the Investor copies of all such documents proposed to be filed, which documents (other than those filed pursuant to Rule 424 promulgated under the Securities Act) will be subject to the reasonable and prompt review of the Investor (in each of which cases, if such document contains material non-public information as consented to by the Investor pursuant to Section 6.13, the information provided to Investor will be kept strictly confidential until filed and treated as subject to Section 6.08). The Investor shall furnish comments on a Registration Statement and any related amendment and supplement to a Registration Statement to the Company within 24 hours of the receipt thereof. If the Investor fails to provide comments to the Company within such 24-hour period, then the Registration Statement, related amendment or related supplement, as applicable, shall be deemed accepted by the Investor in the form originally delivered by the Company to the Investor.

(d) Delivery of Final Documents. The Company shall furnish to the Investor without charge, (i) at least one copy of each Registration Statement as declared effective by the SEC and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, all exhibits and each preliminary prospectus, (ii) at the request of the Investor, at least one copy of the final prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as the Investor may reasonably request) and (iii) such other documents as the Investor may reasonably request from time to time in order to facilitate the disposition of the Common Shares owned by the Investor pursuant to a Registration Statement. Filing of the forgoing with the SEC via its EDGAR system shall satisfy the requirements of this section.

(e) Amendments and Other Filings. The Company shall use commercially reasonable efforts to (i) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the related prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep such Registration Statement effective at all times during the Commitment Period, and prepare and file with the SEC such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities; (ii) cause the related prospectus to be amended or supplemented by any required prospectus supplement (subject to the terms of this Agreement), and as so supplemented or amended to be filed pursuant to Rule 424 promulgated under the Securities Act; (iii) provide the Investor copies of all correspondence from and to the SEC relating to a Registration Statement (provided that the Company may excise any information contained therein which would constitute material non-public information), and (iv) comply with the provisions of the Securities Act with respect to the disposition of all Common Shares of the Company covered by such Registration Statement until such time as all of such Common Shares shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 6.01(e)) by reason of the Company's filing a report on Form 10-K, Form 10-Q, or Form 8-K or any analogous report under the Exchange Act, the Company shall use commercially reasonable efforts to file such report in a prospectus supplement filed pursuant to Rule 424 promulgated under the Securities Act to incorporate such filing into the Registration Statement, if applicable, or shall file such amendments or supplements with the SEC either on the day on which the Exchange Act report is filed which created the requirement for the Company to amend or supplement the Registration Statement, if feasible, or otherwise promptly thereafter.

(f) Blue-Sky. The Company shall use its commercially reasonable efforts to, if required by Applicable Law, (i) register and qualify the Common Shares covered by a Registration Statement under such other securities or "blue sky" laws of such jurisdictions in the United States as the Investor reasonably requests, (ii) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Commitment Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Commitment Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Common Shares for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (w) make any change to its articles of incorporation or bylaws, (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 6.01(f), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify the Investor of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Common Shares for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

Section 6.02 Suspension of Registration Statement.

(a) Establishment of a Black Out Period. During the Commitment Period, the Company from time to time may suspend the use of the Registration Statement by written notice to the Investor in the event that the Company determines in its sole discretion in good faith that such suspension is necessary to (A) delay the disclosure of material nonpublic information concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company or (B) amend or supplement the Registration Statement or prospectus so that such Registration Statement or prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (a "Black Out Period").

(b) No Sales by Investor During the Black Out Period. During such Black Out Period, the Investor agrees not to sell any Common Shares of the Company.

(c) Limitations on the Black Out Period. The Company shall not impose any Black Out Period that is longer than 60 days or in a manner that is more restrictive (including, without limitation, as to duration) than the comparable restrictions that the Company may impose on transfers of the Company's equity securities by its directors and senior executive officers. In addition, the Company shall not deliver any Advance Notice during any Black Out Period. If the public announcement of such material, nonpublic information is made during a Black Out Period, the Black Out Period shall terminate immediately after such announcement, and the Company shall immediately notify the Investor of the termination of the Black Out Period.

Section 6.03 Listing of Common Shares. As of each Advance Date, the Shares to be sold by the Company from time to time hereunder will have been registered under Section 12(b) of the Exchange Act and approved for listing on the Principal Market or Trading Market, subject to official notice of issuance.

Section 6.04 Opinion of Counsel. Prior to the date of the delivery by the Company of the first Advance Notice, the Investor shall have received an opinion and negative assurances letter from counsel to the Company in form and substance reasonably satisfactory to the Investor.

Section 6.05 Exchange Act Registration. The Company will use commercially reasonable efforts to file in a timely manner all reports and other documents required of it as a reporting company under the Exchange Act and will not take any action or file any document (whether or not permitted by Exchange Act or the rules thereunder) to terminate or suspend its reporting and filing obligations under the Exchange Act.

Section 6.06 Transfer Agent Instructions. For any time while there is a Registration Statement in effect for this transaction, the Company shall (if required by the transfer agent for the Common Shares) cause legal counsel for the Company to deliver to the transfer agent for the Common Shares (with a copy to the Investor) instructions to issue Common Shares to the Investor free of restrictive legends upon each Advance if the delivery of such instructions are consistent with Applicable Law and the Investor has provided the Transfer Agent Deliverables with respect to such Common Shares required by this Agreement.

Section 6.07 Corporate Existence. The Company will use commercially reasonable efforts to preserve and continue the corporate existence of the Company during the Commitment Period.

Section 6.08 Notice of Certain Events Affecting Registration; Suspension of Right to Make an Advance. The Company will promptly notify the Investor, and confirm in writing, upon its becoming aware of the occurrence of any of the following events in respect of a Registration Statement or related prospectus relating to an offering of Common Shares (in each of which cases the information provided to Investor will be kept strictly confidential): (i) except for requests made in connection with SEC or other Federal or state governmental authority investigations disclosed in the SEC Documents, receipt of any request for additional information by the SEC or any other Federal or state governmental authority during the period of effectiveness of the Registration Statement or any request for amendments or supplements to the Registration Statement or related prospectus; (ii) the issuance by the SEC or any other Federal governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Common Shares for sale in any jurisdiction or the initiation or written threat of any proceeding for such purpose; (iv) the happening of any event that makes any statement made in the Registration Statement or related prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the related prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or of the necessity to amend the Registration Statement or supplement a related prospectus to comply with the Securities Act or any other law; and (v) the Company's reasonable determination that a post-effective amendment to the Registration Statement would be appropriate; and the Company will promptly make available to the Investor any such supplement or amendment to the related prospectus. The Company shall not deliver to the Investor any Advance Notice, and the Company shall not sell any Shares pursuant any pending Advance Notice (other than as required pursuant to Section 2.05(d)), during the continuation of any of the foregoing events in clauses (i) through (v) above, or in the event that (vi) there shall be no bid for the Common Shares on the Principal Market or Trading Market for a period of 15 consecutive minutes at any time during the applicable Pricing Period or (vii) there shall be a "trading halt" or circuit breaker" event with respect to the Common Shares on the Principal Market or Trading Market during the applicable Pricing Period (each of the events described in the immediately preceding clauses (i) through (vii), inclusive, a "Material Outside Event").

Section 6.09 Consolidation. If an Advance Notice has been delivered to the Investor, then the Company shall not effect any consolidation of the Company with or into, or a transfer of all or substantially all the assets of the Company to another entity before the transaction contemplated in such Advance Notice has been closed in accordance with Section 2.05 hereof, and all Shares in connection with such Advance have been received by the Investor.

Section 6.10 Issuance of the Company's Common Shares. The issuance and sale of the Common Shares hereunder shall be made in accordance with the provisions and requirements of Section 4(a)(2) of the Securities Act or Regulation D under the Securities Act and any applicable state securities law.

Section 6.11 Market Activities. The Company will not, directly or indirectly, take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company under Regulation M of the Exchange Act.

Section 6.12 Expenses. The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay all expenses incident to the performance of its obligations hereunder, including but not limited to (i) the preparation, printing and filing of the Registration Statement and each amendment and supplement thereto, of each prospectus and of each amendment and supplement thereto; (ii) the preparation, issuance and delivery of any Shares issued pursuant to this Agreement, (iii) all reasonable fees and disbursements of the Company's counsel, accountants and other advisors, (iv) the qualification of the Shares under securities laws in accordance with the provisions of this Agreement, including filing fees in connection therewith, (v) the printing and delivery of copies of any prospectus and any amendments or supplements thereto, (vi) the fees and expenses incurred in connection with the listing or qualification of the Shares for trading on the Principal Market or Trading Market, or (vii) filing fees of the SEC and the Principal Market or Trading Market.

Section 6.13 Current Report. The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide the Investor with any material, non-public information regarding the Company or any of its Subsidiaries without the express prior written consent of the Investor (which may be granted or withheld in the Investor's sole discretion and must include an agreement to keep such information confidential until publicly disclosed or 45 days have passed); it being understood that the mere notification of Investor required pursuant to Section 6.08(iv) hereof shall not in and of itself be deemed to be material non-public information. Notwithstanding anything contained in this Agreement to the contrary, the Company expressly agrees that it shall use its commercial reasonable efforts to publicly disclose, no later than 45 days following the date hereof, but in any event prior to delivering the first Advance Notice hereunder, any information communicated to the Investor by or, to the knowledge of the Company, on behalf of the Company in connection with the transactions contemplated herein, which, following the date hereof would, if not so disclosed, constitute material, non-public information regarding the Company or its Subsidiaries.

Section 6.14 Advance Notice Limitation. The Company shall not deliver an Advance Notice if a shareholder meeting or corporate action date, or the record date for any shareholder meeting or any corporate action, would fall during the period beginning two Trading Days prior to the date of delivery of such Advance Notice and ending two Trading Days following the Closing of such Advance.

Section 6.15 Use of Proceeds. The Company will use the proceeds from the sale of the Common Shares hereunder for working capital and other general corporate purposes or, if different, in a manner consistent with the application thereof described in the Registration Statement. Neither the Company nor any Subsidiary will, directly or indirectly, use the proceeds of the transactions contemplated herein, or lend, contribute, facilitate or otherwise make available such proceeds to any Person (i) to fund, either directly or indirectly, any activities or business of or with any Person that is identified on the list of Specially Designated Nationals and Blocker Persons maintained by OFAC, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions or Sanctions Programs, or (ii) in any other manner that will result in a violation of Sanctions.

Section 6.16 Compliance with Laws. The Company shall comply in all material respects with all Applicable Laws.

Section 6.17 Aggregation. From and after the date of this Agreement, neither the Company, nor or any of its affiliates will, and the Company shall use its commercially reasonable efforts to ensure that no Person acting on their behalf will, directly or indirectly, make any offers or sales of any security or solicit any offers to buy any security, under circumstances that would cause this offering of the Securities by the Company to the Investor to be aggregated with other offerings by the Company in a manner that would require shareholder approval pursuant to the rules of the Principal Market or Trading Market on which any of the securities of the Company are listed or designated, unless shareholder approval is obtained before the closing of such subsequent transaction in accordance with the rules of such Principal Market or Trading Market.

Section 6.18 Other Transactions. The Company shall not enter into, announce or recommend to its shareholders any agreement, plan, arrangement or transaction in or of which the terms thereof would restrict, materially delay, conflict with or impair the ability or right of the Company to perform its obligations under the Transaction Documents, including, without limitation, the obligation of the Company to deliver the Shares to the Investor in accordance with the terms of the Transaction Documents.

Section 6.19 Integration. From and after the date of this Agreement, neither the Company, nor or any of its affiliates will, and the Company shall use its commercially reasonable efforts to ensure that no Person acting on their behalf will, directly or indirectly, make any offers or sales of any security or solicit any offers to buy any security, under circumstances that would require registration of the offer and sale of any of the Securities under the Securities Act.

Section 6.20 Limitation on Variable Rate Transactions. From the date hereof until the earlier of (i) the date that the Investor has purchased $20 million in Common Shares hereunder, (ii) 12 months after effectiveness of initial registration statement or (iii) three (3) months after any Termination hereunder (the "Limitation Date"), the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company of Common Shares or Common Share Equivalents (or a combination of units thereof) involving a Variable Rate Transaction, other than in connection with an Exempt Issuance or with the prior written consent of the Investor. The Investor shall be entitled to seek injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages, without the necessity of showing economic loss and without any bond or other security being required.

"Common Share Equivalents" means any securities of the Company which entitle the holder thereof to acquire at any time Common Shares, including, without limitation, Common Shares, any debt, preferred shares, 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 Shares.

"Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any future equity or debt securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional Common Shares or Common Share Equivalents either (A) at a conversion price, exercise price, exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the Common Shares at any time after the initial issuance of such equity or debt securities (including, without limitation, pursuant to any "cashless exercise" provision), or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such equity or debt security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Shares (including, without limitation, any "full ratchet" or "weighted average" anti-dilution provisions, but not including any standard anti-dilution protection for any reorganization, recapitalization, non-cash dividend, share split, reverse share split or other similar transaction), (ii) issues or sells any equity or debt securities, including without limitation, Common Shares or Common Share Equivalents, either (A) at a price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Shares (other than standard anti-dilution protection for any reorganization, recapitalization, non-cash dividend, share split, reverse share split or other similar transaction), or (B) that is subject to or contains any put, call, redemption, buy-back, price-reset or other similar provision or mechanism (including, without limitation, a "Black-Scholes" put or call right) that provides for the issuance of additional equity securities of the Company or the payment of cash by the Company, or (iii) enters into any agreement, including, but not limited to, an at-the-market offering or "equity line" (that is not an Exempt Issuance) or other continuous offering or similar offering of Common Shares or Common Share Equivalents, whereby the Company may sell Common Shares or Common Share Equivalents at a future determined price.

"Exempt Issuance" means the issuance of (a) Common Shares, options, restricted stock units or other equity incentive awards to employees, officers, consultants, directors or vendors of the Company pursuant to any equity incentive plan duly adopted for such purpose, by the Board of Directors of the Company or a majority of the members of a committee of directors established for such purpose, (b) any Shares issued to the Investor pursuant to this Agreement, (c) Common Shares, Common Share Equivalents or other securities issued to the Investor pursuant to any other existing or future contract, agreement or arrangement between the Company and the Investor, (d) Common Shares, Common Share Equivalents or other securities upon the exercise, exchange or conversion of any Common Shares, Common Share Equivalents or other securities held by the Investor at any time, (e) any securities issued upon the exercise or exchange of or conversion of any Common Share Equivalents issued and outstanding on the date hereof, provided that such securities or Common Share Equivalents referred to in this clause (e) have not been amended since the date hereof to increase the number of such securities or Common Shares underlying such securities or to decrease the exercise price, exchange price or conversion price of such securities, (f) Common Share Equivalents that are convertible into, exchangeable or exercisable for, or include the right to receive Common Shares at a conversion price, exercise price, exchange rate or other price (which may be below the then current market price of the Common Shares) that is fixed at the time of initial issuance of such Common Share Equivalents (subject only to standard anti-dilution protection for any reorganization, recapitalization, non-cash dividend, share split, reverse share split or other similar transaction), which fixed conversion price, exercise price, exchange rate or other price shall not at any time after the initial issuance of such Common Share Equivalent be based upon or varying with the trading prices of or quotations for the Common Shares or subject to being reset at some future date and (g) securities issued pursuant to acquisitions, divestitures, licenses, partnerships, collaborations or strategic transactions approved by the Board of Directors of the Company or a majority of the members of a committee of directors established for such purpose, which acquisitions, divestitures, licenses, partnerships, collaborations or strategic transactions can have a Variable Rate Transaction component, 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 asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities. In the event that the Company enters into a Variable Rate Transaction in breach of this section, the Company shall promptly pay to Investor $200,000 in cash.

Section 6.21 DTC. The Company shall take all action reasonably required to ensure that its Common Shares can be transferred electronically as DWAC Shares if the Transfer Agent Deliverables with respect to such Common Shares have been provided by the Investor.

Section 6.22 Non-Public Information. Each party hereto agrees not to disclose any Confidential Information of the other party to any third party and shall not use the Confidential Information for any purpose other than in connection with, or in furtherance of, the transactions contemplated hereby in full compliance with applicable securities laws; provided, however that a party may disclose Confidential Information that is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure. Each party hereto acknowledges that the Confidential Information shall remain the property of the disclosing party and agrees that it shall take all reasonable measures to protect the secrecy of any Confidential Information disclosed by the other party. The Company confirms that neither it nor any other Person acting on its behalf shall provide the Investor or its agents or counsel with any information that constitutes material, non-public information, unless a simultaneous public announcement thereof is made by the Company in the manner contemplated by Regulation FD under the Exchange Act. In the event of a breach of the foregoing covenant by the Company or any Person acting on its behalf (as determined in the reasonable good faith judgment of the Investor), in addition to any other remedy provided herein or in the other Transaction Documents, the Investor shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, non-public information without the prior approval by the Company; provided the Investor shall have first provided notice to the Company that it believes it has received information that constitutes material, non-public information, the Company shall have at least twenty-four (24) hours to publicly disclose such material, non-public information prior to any such disclosure by the Investor, and the Company shall have failed to publicly disclose such material, non-public information within such time period. The Investor shall not have any liability to the Company, any of its Subsidiaries, or any of their respective directors, officers, employees, shareholders or agents, for any such disclosure. The Company understands and confirms that the Investor shall be relying on the foregoing covenants in effecting transactions in securities of the Company.

Section 6.23 Prohibition of Short Sales and Hedging Transactions. The Investor agrees that beginning on the date of this Agreement and ending on the date of termination of this Agreement as provided in Section 11, the Investor and its agents, representatives and affiliates shall not in any manner whatsoever enter into or effect, directly or indirectly, any (i) "short sale" (as such term is defined in Rule 200 of Regulation SHO of the Exchange Act) of the Common Shares (excluding transactions properly marked "short exempt") or (ii) hedging transaction, which establishes a net short position with respect to the Common Shares.

Section 6.24 Use of Name. The Company shall not, directly or indirectly, use the names "Arena Business Solutions Global", "Arena Business Results", "Arena Management Company, LLC", "Arena Finance Company, LLC", or "Arena", or any derivations thereof, or logos associated with these names, as the case may be, in any manner or take any action that may imply any relationship with the Investor or any of its Affiliates without the prior written consent of the Investor, provided, however, the Investor hereby consents to all lawful uses of these names in the prospectus, statement and other materials that are required by applicable laws or pursuant to the disclosure requirements of the SEC or any state securities authority.

ARTICLE VII
CONDITIONS FOR DELIVERY OF ADVANCE NOTICE

Section 7.01 Conditions Precedent to the Right of the Company to Deliver an Advance Notice. The right of the Company to deliver an Advance Notice and the obligations of the Investor hereunder with respect to an Advance is subject to:

(a) the satisfaction by the Company, on each Advance Notice Date (a "Condition Satisfaction Date"), of each of the following conditions:

(b) Accuracy of the Company's Representations and Warranties. The representations and warranties of the Company in this Agreement shall be true and correct in all material respects.

(c) Registration of the Common Shares with the SEC. There is an effective Registration Statement pursuant to which the Investor is permitted to utilize the prospectus thereunder to resell all of the Registrable Securities. The Company shall have filed with the SEC all reports, notices and other documents required under the Exchange Act and applicable SEC regulations during the twelve-month period immediately preceding the applicable Condition Satisfaction Date.

(d) Authority. The Company shall have obtained all permits and qualifications required by any applicable state for the offer and sale of all the Common Shares issuable pursuant to such Advance Notice, or shall have the availability of exemptions therefrom. The sale and issuance of such Common Shares shall be legally permitted by all laws and regulations to which the Company is subject.

(e) No Material Outside Event or Material Adverse Effect. No Material Outside Event or Material Adverse Effect shall have occurred and be continuing.

(f) Performance by the Company. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior the applicable Condition Satisfaction Date including, without limitation, the delivery of all Common Shares issuable pursuant to all previously delivered Advance Notices and the issuance of all Commitment Fee Shares previously required to be issued to Investor (for the avoidance of doubt, if the Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement at the time of the applicable Condition Satisfaction Date, but did not comply with any timing requirement set forth herein, then this condition shall be deemed satisfied unless the Investor is materially prejudiced by the failure of the Company to comply with any such timing requirement) and the issuance of the Commitment Fee Shares free of any restrictive legends in accordance with Section 13.04 herein.

(g) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits or directly, materially and adversely affects any of the transactions contemplated by this Agreement.

(h) No Suspension of Trading in or Delisting of Common Shares. The Common Shares are quoted for trading on the Principal Market or Trading Market and all of the Shares issuable pursuant to such Advance Notice will be listed or quoted for trading on the Principal Market or Trading Market. The Company shall not have received any written notice that is then still pending threatening the continued quotation of the Common Shares on the Principal Market or Trading Market.

(i) Authorized. There shall be a sufficient number of authorized but unissued and otherwise unreserved Common Shares for the issuance of all of the Shares issuable pursuant to such Advance Notice.

(j) Executed Advance Notice. The representations contained in the applicable Advance Notice shall be true and correct in all material respects as of the applicable Condition Satisfaction Date.

(k) Consecutive Advance Notices. Except with respect to the first Advance Notice, the Pricing Period for all prior Advances has been completed.

(l) Shareholder Approval. The Company shall have obtained Shareholder Approval.

Furthermore, the Company shall not have the right to deliver an Advance Notice to the Investor if any of the following shall occur:

(l) the Company breaches any representation or warranty in any material respect, or breaches any covenant or other term or condition under any Transaction Document in any material respect, and except in the case of a breach of a covenant which is reasonably curable, only if such breach continues for a period of at least five (5) consecutive Business Days;

(m) if any Person commences a proceeding against the Company pursuant to or within the meaning of any Bankruptcy Law for so long as such proceeding is not dismissed;

(n) if the Company is at any time insolvent, or, pursuant to or within the meaning of any Bankruptcy Law, (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property, or (iv) makes a general assignment for the benefit of its creditors or (v) the Company is generally unable to pay its debts as the same become due;

(o) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against the Company in an involuntary case, (ii) appoints a Custodian of the Company or for all or substantially all of its property, or (iii) orders the liquidation of the Company or any Subsidiary for so long as such order, decree or similar action remains in effect; or

(p) if at any time the Company is not eligible or is unable to transfer its Shares to Investor, including, without limitation, electronically through DTC's Deposit/Withdrawal At Custodian system.

ARTICLE VIII
NON-DISCLOSURE OF NON-PUBLIC INFORMATION

The Company covenants and agrees that, other than as expressly required by Section 6.08 hereof or, with the Investor's consent pursuant to Section 6.01(c) and 6.13, it shall refrain from disclosing, and shall cause its officers, directors, employees and agents to refrain from disclosing, any material non-public information (as determined under the Securities Act, the Exchange Act, or the rules and regulations of the SEC) directly or indirectly to the Investor or its affiliates, without also disseminating such information to the public, unless prior to disclosure of such information the Company identifies such information as being material non-public information and provides the Investor with the opportunity to accept or refuse to accept such material non-public information for review. Unless specifically agreed to in writing, in no event shall the Investor have a duty of confidentiality, or be deemed to have agreed to maintain information in confidence, with respect to the delivery of any Advance Notices.

ARTICLE IX
NON EXCLUSIVE AGREEMENT

Notwithstanding anything contained herein, this Agreement and the rights awarded to the Investor hereunder are non-exclusive, and the Company may, at any time throughout the term of this Agreement and thereafter, issue and allot, or undertake to issue and allot, any shares and/or securities and/or convertible notes, bonds, debentures, options to acquire shares or other securities and/or other facilities which may be converted into or replaced by Common Shares or other securities of the Company, and to extend, renew and/or recycle any bonds and/or debentures, and/or grant any rights with respect to its existing and/or future share capital.

ARTICLE X
CHOICE OF LAW/JURISDICTION

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without regard to the principles of conflict of laws. The parties further agree that any action between them shall be heard in New York County, New York, and expressly consent to the jurisdiction and venue of the Supreme Court of New York, sitting in New York County, New York and the United States District Court of the Southern District of New York, sitting in New York, New York, for the adjudication of any civil action asserted pursuant to this Agreement.

ARTICLE XI
ASSIGNMENT; TERMINATION

Section 11.01 Assignment. Neither this Agreement nor any rights or obligations of the parties hereto may be assigned to any other Person.

Section 11.02 Termination.

(a) Unless earlier terminated as provided hereunder, this Agreement shall terminate automatically on the earliest of (i) the first day of the month next following the 36-month anniversary of the date hereof or (ii) the date on which the Investor shall have made payment of Advances pursuant to this Agreement for Common Shares equal to the Commitment Amount.

(b) The Company may terminate this Agreement effective upon five Trading Days' prior written notice to the Investor; provided that (i) there are no outstanding Advance Notices, the Common Shares under which have yet to be issued, and (ii) the Company has paid all amounts owed to the Investor pursuant to this Agreement including, without limitation, all Commitment Fee Shares. This Agreement may be terminated at any time by the mutual written consent of the parties, effective as of the date of such mutual written consent unless otherwise provided in such written consent.

(c) Nothing in this Section 11.02 shall be deemed to release the Company or the Investor from any liability for any breach under this Agreement, or to impair the rights of the Company and the Investor to compel specific performance by the other party of its obligations under this Agreement. The indemnification provisions contained in Article V shall survive termination hereunder.

ARTICLE XII
NOTICES

Other than with respect to Advance Notices, which must be in writing and will be deemed delivered on the day set forth in Section 2.02 in accordance with Exhibit C, any notices, consents, waivers, or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile or e-mail if sent on a Trading Day, or, if not sent on a Trading Day, on the immediately following Trading Day; (iii) 5 days after being sent by U.S. certified mail, return receipt requested, (iv) 1 day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications (except for Advance Notices which shall be delivered in accordance with Exhibit A hereof) shall be:

If to the Company, to:	Safe and Green Development Corporation [ADDRESS] Attn: E-mail:
With a Copy (which shall not constitute notice or delivery of process) to:	[COMPANY TO ADVISE]
If to the Investor(s):	ARENA BUSINESS SOLUTIONS GLOBAL SPC II, LTD 405 Lexington Ave, 59th Floor New York, NY 10174 Attention: Yoav Stramer Telephone: (212) 752-2568 Email:
With a Copy (which shall not constitute notice or delivery of process) to:	Pryor Cashman LLP 7 Times Square New York, New York 10036 Attention: Matthew Ogurick, Esq. Telephone: (212) 326-0243 Email:

Either may change its information contained in this Article XII by delivering notice to the other party as set forth herein.

ARTICLE XIII
MISCELLANEOUS

Section 13.01 Counterparts. This Agreement may be executed in identical counterparts, both which 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. Facsimile or other electronically scanned and delivered signatures, including by e-mail attachment, shall be deemed originals for all purposes of this Agreement.

Section 13.02 Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between the Investor, the Company, their respective affiliates and persons acting on their behalf with respect to the matters discussed herein, and this Agreement contains the entire understanding of the parties with respect to the matters covered herein and, except as specifically set forth herein, neither the Company nor the Investor makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by the parties to this Agreement. The provisions of the existing confidentiality agreement between the Investor and the Company shall remain in force, except that all provisions therein dealing with the treatment of material non-public information are superseded by this Agreement.

Section 13.03 Reporting Entity for the Common Shares. The reporting entity relied upon for the determination of the trading price or trading volume of the Common Shares on any given Trading Day for the purposes of this Agreement shall be Bloomberg, L.P. or any successor thereto. The written mutual consent of the Investor and the Company shall be required to employ any other reporting entity.

Section 13.04 Due Diligence Fee; Commitment Fee Shares.

(a) Each of the parties shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Agreement and the transactions contemplated hereby, except that the Company shall be responsible for all of Investor's customary due diligence and legal fees (and will provide proof of any retainer payments and engagement letters).

(b) In consideration for the Investor's execution and delivery of this Agreement, the Company shall issue or cause to be issued to the Investor, in two separate tranches, as a commitment fee, that number of Common Shares ("Commitment Fee Shares") equal to (i) with respect to the first tranche ("First Tranche"), 500,000 divided by the simple average of the daily VWAP of the Common Shares during the five (5) Trading Days immediately preceding the effectiveness of the initial registration statement (the "Initial Registration Statement") on which the Commitment Fee Shares are registered (the "First Tranche Price"), promptly (but in no event later than one (1) Trading Day) after the effectiveness of the Registration Statement (the "Initial Issuance") and (ii) with respect to the second tranche ("Second Tranche"), 250,000 divided by the simple average of the daily VWAP of the Common Shares during the five (5) Trading Days immediately preceding the three (3) month anniversary (the "Anniversary") of the effectiveness of the registration statement on which the Commitment Fee Shares are registered (the "Second Tranche Price"), promptly (but in no event later than one (1) Trading Day) after the Anniversary.

(c) Each reference price calculation set forth above will capture up to the date before (a) such registration statement becomes effective with respect to the First Tranche and (b) the Anniversary with respect to the Second Tranche. For any time while there is a Registration Statement in effect for this transaction, the Company shall (if required by the transfer agent) deliver to the transfer agent for the Common Shares (with a copy to the Investor) instructions to issue the Commitment Fee Shares to the Investor free of restrictive legends, in each case supported as needed by an opinion from legal counsel for the Company. For the avoidance of any doubt, in the event that this Agreement is terminated after the Initial Issuance for any reason, the Company shall nevertheless be obligated to effect the remaining issuance of Commitment Fee Shares hereunder immediately upon such termination based on the per Common Share price which price shall be equal to the simple average of the daily VWAP of the Common Shares during the five (5) Trading Days immediately preceding the date of such Termination.

The Commitment Fee Shares shall be subject to a true-up after each issuance pursuant to subsection (b) above whereby the Company shall deliver irrevocable instructions to its transfer agent to electronically transfer to the Investor or its designee(s) that number of Common Shares having an aggregate dollar value equal to (i) with respect to the First Tranche, 500,000 based on the lower of (A) the First Tranche Price and (B) the lower of (a) the simple average of the three (3) lowest daily intraday trade prices over the twenty (20) Trading Days after (and not including) the date of effectiveness of the Initial Registration Statement and (b) the closing price on the twentieth (20th) Trading Day after the effectiveness of Registration Statement, and (ii) with respect to the Second Tranche, 250,000 based on the lower of (A) the Second Tranche Price and (B) the lower of (a) the simple average of the three (3) lowest daily intraday trade prices over the twenty (20) Trading Days after (and not including) the Anniversary and (b) the closing price on the twentieth (20th) Trading Day after the Anniversary.

The Company shall therefore promptly (but in no event later than one (1) Trading Day) issue to the Company the Commitment Fee Shares based on the pricing formulae hereinabove (X) at the First Tranche Price upon effectiveness of the Registration Statement and (Y) at the Second Tranche Price upon the Anniversary, and shall, if applicable, issue additional Commitment Fee Shares to the Investor promptly (but in no event later than one (1) Trading Day after the end of the pricing periods described in the preceding clauses (c)(i)(B) and (c)(ii)(B) to the extent such additional Commitment Fee Shares are issuable pursuant to the terms of this Section 13.04.

Section 13.05 Brokerage. Except as set forth on Schedule 13.05, each of the parties hereto represents that it has had no dealings in connection with this transaction with any finder or broker who will demand payment of any fee or commission from the other party. The Company on the one hand, and the Investor, on the other hand, agree to indemnify the other against and hold the other harmless from any and all liabilities to any person claiming brokerage commissions or finder's fees on account of services purported to have been rendered on behalf of the indemnifying party in connection with this Agreement or the transactions contemplated hereby.

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IN WITNESS WHEREOF, the parties hereto have caused this Purchase Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

COMPANY:

SAFE AND GREEN DEVELOPMENT CORPORATION

By: /s/ Nicolai Brune
Name: Nicolai Brune
Title: Chief Financial Officer

INVESTOR:

ARENA BUSINESS SOLUTIONS GLOBAL SPC II, LTD

By: /s/ Lawrence Cutler
Name: Lawrence Cutler
Title: Authorized Signatory

EXHIBIT A
ADVANCE NOTICE

SAFE & GREEN DEVELOPMENT CORPORATION

Dated: _____ Advance Notice Number: ____

The undersigned, _____, hereby certifies, with respect to the sale of Common Shares of SAFE & GREEN DEVELOPMENT CORPORATION (the "Company") issuable in connection with this Advance Notice, delivered pursuant to that certain Purchase Agreement, dated as of August __, 2024 (the "Agreement"), as follows:

1 The undersigned is the duly elected _____ of the Company.

2 There are no fundamental changes to the information set forth in the Registration Statement which would require the Company to file a post-effective amendment to the Registration Statement.

3 All conditions to the delivery of this Advance Notice are satisfied as of the date hereof.

4 The number of Common Shares that the Company is requesting in this Advance is _____.

5 The number of Common Shares of the Company issued and outstanding as of the date hereof is _____.

6 The Pricing Period shall be one (1) Trading Day.

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

SAFE & GREEN DEVELOPMENT CORPORATION

By: _____
Name:
Title:

EXHIBIT B
FORM OF SETTLEMENT DOCUMENT

VIA EMAIL

SAFE & GREEN DEVELOPMENT CORPORATION

Attn:

Email:

Subject:

Below please find the settlement information with respect to the Advance Notice Date of:

1. Amount of Advance requested in the Advance Notice
2. Adjusted Advance (after taking into account any adjustments pursuant to Section 2.01):
3. Market Price
4. Purchase Price (Market Price x 96%) per share
5. Number of Shares due to Investor

Please issue the number of Shares due to the Investor to the account of the Investor as follows:

INVESTOR'S DTC PARTICIPANT #[3]:

ACCOUNT NAME:
ACCOUNT NUMBER:
ADDRESS:
CITY:
COUNTRY:
CONTACT PERSON:
NUMBER AND/OR EMAIL:

Sincerely,

ARENA BUSINESS SOLUTIONS GLOBAL SPC II, LTD

By: _____
Name:
Title:

Agreed and Approved:

SAFE & GREEN DEVELOPMENT CORPORATION

By: _____
Name:
Title:

[3] Investor understands and acknowledges that shares will be issued in book-entry form on the DRS of the transfer agent or certificated unless the conditions set forth in Section 2.05(b) have been satisfied

SCHEDULE 1
Authorized Representatives

The following individuals may execute Advance Notices:

1.

2.

EXHIBIT C

VIA EMAIL

Email: ELOC@arenaco.com

Subject: ELOC: SAFE & GREEN DEVELOPMENT CORPORATION
Advance Notice

Below please find the Advance Notice Date of:

1. Amount of Advance Shares:

2. Time of Advance: