

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 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): June 8, 2021

**Harbor Custom Development, Inc.**

(Exact name of registrant as specified in its charter)

**Washington**

(State or other jurisdiction  
of incorporation)

**333-237507**

(Commission  
File Number)

**46-4827436**

(IRS Employer  
Identification No.)

11505 Burnham Dr., Suite 301

Gig Harbor, Washington 98332

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code **(253) 649-0636**

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 (see General Instruction A.2. below):

- 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:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, no par value	HCDI	The Nasdaq Stock Market LLC
Series A Cumulative Convertible Preferred Stock, no par value per share	HCDIP	The Nasdaq Stock Market LLC
Warrants to purchase Common Stock	HCDIW	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 June 9, 2021, Harbor Custom Development, Inc., a Washington corporation (the "Company"), entered into an underwriting agreement (the "Underwriting Agreement") with ThinkEquity, a division of Fordham Financial Management, Inc. (the "Underwriter"), pursuant to which the Company agreed to sell to the Underwriter in a firm commitment underwritten public offering (the "Offering") 1,200,000 shares of 8.0% Series A Cumulative Convertible Preferred Stock ("Series A Preferred Shares") and 3,600,000 warrants (the "Warrants") to purchase common stock at \$5.00 per share. In addition, the Company granted the Underwriter an over-allotment option to purchase up to an additional 180,000 Series A Preferred Shares and 540,000 Warrants. On June 9, 2021, the Underwriter exercised the over-allotment option with respect to 540,000 Warrants.

The Offering was made pursuant to registration statements on Form S-1 (File Nos. 333-255229 and 333-256918), filed with the Securities and Exchange Commission (the "Commission"). ThinkEquity acted as sole book-running manager for the Offering.

The net proceeds to the Company from the Offering, after deducting the underwriting discount and the Underwriter's fees and expenses were \$27,755,122. The Company anticipates using the net proceeds from the Offering primarily for land acquisition, construction, and development; debt reduction; and working capital.

Also under the terms of the Underwriting Agreement, the Company, agreed to pay the Underwriter an underwriting discount of 7.0% of the gross proceeds received by the Company in the Offering (excluding the over-allotment option) and issue two separate warrants, the first exercisable for the purchase of an aggregate of 1% of the Series A Preferred Shares sold in the Offering (excluding the over-allotment option) and the second exercisable for the purchase of an aggregate of 1% of the Warrants sold in the Offering (excluding the over-allotment option) (the "Representative's Warrants"). The warrant to purchase warrants to purchase Common Stock ("Representative's Common Stock Warrants") will be exercisable at an initial price of \$0.01 per the Representative's Common Stock Warrant. The Representative's Common Stock Warrants have the same terms and conditions as the Warrants offered and sold in the Offering. The Representative's Warrants are exercisable for a term of four years and six months beginning on December 6, 2021.

The Underwriting Agreement contains customary representations and warranties that the parties made to, and solely for the benefit of, the other party in the context of all of the terms and conditions of that agreement and in the context of the specific relationship between the parties. The provisions of the Underwriting Agreement, including the representations and warranties contained therein, are not for the benefit of any party other than the parties to such agreements and are not intended as documents for the investors and the public to obtain factual information about the current state of affairs of the parties to those documents and agreements. Rather, investors and the public should look to other disclosures contained in the Company's filings with the Commission.

In connection with the Offering, on June 8, 2021, the Company filed with the Secretary of State of Washington a Certificate of Designation of 8.0% Series A Cumulative Convertible Preferred Stock, designating a total of 2,000,000 Series A Preferred Shares (the "Certificate of Designation").

The foregoing summary of the terms of the Underwriting Agreement and Certificate of Designation is subject to, and qualified in its entirety by reference to the forms of such documents, copies of which are filed as exhibits to this Current Report on Form 8-K and incorporated herein by reference.

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

On June 8, 2021, the Company filed with the Secretary of State of Washington the Certificate of Designation, which authorizes a total of 2,000,000 Series A Preferred Shares, with the following terms:

*Liquidation Preference of Series A Preferred Shares.* Upon the occurrence of any liquidation, dissolution, or winding up of the Company, holders of the Series A Preferred Shares will have the right to receive \$25.00 per share, plus all accumulated, accrued, and unpaid dividends (whether or not earned or declared) to and including the date of payment, before any payments are made to the holders of Common Stock or to the holders of other equity securities of the Company. The rights of holders of Series A Preferred Shares to receive their liquidation preference will, however, be subject to the proportionate rights of any other class or series of the Company's capital stock ranking in parity with the Series A Preferred Shares as to liquidation, of which none exist as of the date of this Current Report.

*Dividends.* Holders of the Series A Preferred Shares will be entitled to receive, when, as and if declared by the Board of Directors, cumulative cash dividends payable monthly in an amount per Series A Preferred Share equal to \$2.00 per share per annum, which is equivalent to 8.0% of the \$25.00 liquidation preference per share per annum. Dividends on the Series A Preferred Shares will be payable monthly in arrears, beginning with the month ending June 30, 2021. To the extent declared by the Board of Directors, dividends will be payable no later than 20 days after the end of each calendar month, starting on July 20, 2021. Dividends on the Series A Preferred Shares will accumulate whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are declared by the Board of Directors. If the Company fails to make a cash dividend payment for 18 or more consecutive or non-consecutive months, the holders of the Series A Preferred Shares, voting as a separate class, will be entitled to vote for the election of one additional director, with certain conditions, to serve on the Board of Directors until the next annual meeting of shareholders following the date on which all dividends that are owed have been paid.

*Change of Control.* In the case of a "change of control" that is pre-approved by the Board of Directors, holders of Series A Preferred Shares have the option to: (i) demand that the Company redeem the Series A Preferred Shares at (a) \$26.63 per Series A Preferred Share from the date of issuance until June 9, 2022, (b) \$25.81 per Series A Preferred Share from June 9, 2022 until June 9, 2023, and (c) \$25.00 after June 9, 2023, in each case plus the amount of any accumulated and unpaid dividends thereon to but not including the date of redemption (whether or not such dividends shall have been declared); (ii) continue to hold the Series A Preferred Shares; or (iii) convert some or all of the Series A Preferred Shares together with accrued but unpaid dividends. "Change of Control" means that a person or group acquires at least 50% voting control of the Company, and neither the Company nor any surviving entity has its common stock listed on a recognized U.S. exchange.

*Optional Conversion by Holder.* Each Series A Preferred Share, together with accrued but unpaid dividends, is convertible into Common Stock at any time at the option of the holder at a Conversion Price of \$4.50 per share, which initially equals 5,556 shares of Common Stock for each Series A Preferred Share as converted, subject to adjustment for: (i) the payment of stock dividends or other distributions payable in shares of Common Stock on any other class or series of our capital stock; (ii) the issuance to all holders of Common Stock of certain rights or warrants entitling them to subscribe for or purchase Common Stock at a price per share less than the market price per share of Common Stock; and (iii) subdivisions, combinations, and reclassifications of Common Stock. Holders of Series A Preferred Shares will also be entitled to participate in Extraordinary Dividends (as defined in the Certificate of Designation) or other distributions to all holders of Common Stock of any shares of stock (excluding Common Stock) or evidence of indebtedness or assets (including securities, but excluding those dividends, rights, warrants, and distributions referred to in clause (i), (ii) or (iii) above and dividends and distributions paid in cash, but not excluding Extraordinary Dividends paid in cash) to the extent each holder would have been entitled if the holder had held the number of Common Stock acquirable upon complete conversion of the holder's Series A Preferred Shares immediately before the date on which a record is taken for such Extraordinary Dividend or other distribution.

*Automatic Conversion upon Market Trigger.* At the Company's option, the Company may cause the Series A Preferred Shares, plus accrued and unpaid dividends, to be automatically converted, in whole or in part, on a pro rata basis into Common Stock at the Conversion Price if the trading price of the Common Stock equals or exceeds 170% of the Conversion Price for at least 20 trading days in any 30 consecutive trading day period ending five days prior to the date of notice of conversion (such event, the "Market Trigger").

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*Call Feature.* Beginning June 9, 2024, the Company may, at its option, redeem the Series A Preferred Shares, in whole or in part, by paying \$25.00 per share, plus any accrued and unpaid dividends to the date of redemption.

*Ranking.* The Series A Preferred Shares, with respect to dividend rights and rights upon our voluntary or involuntary liquidation, dissolution or winding up, will rank:

- senior to Common Stock and any other class of equity securities, the terms of which provide that such equity securities will rank junior to the Series A Preferred Shares;
- on parity (pari passu) with any equity securities the terms of which provide that such equity securities will rank without preference or priority over the other; and
- junior to any equity securities the terms of which provide that such equity securities will rank senior to the Series A Preferred Shares.

*Voting Rights.* The Series A Preferred Shares will not vote with the Common Stock, however, if dividends on the Series A Preferred Shares are in arrears for 18 or more consecutive or non-consecutive months, the holders of the Series A Preferred Shares, voting as a single class, shall be entitled to vote for the election of one additional director to serve on the Board of Directors until the next annual meeting of shareholders following the date on which all dividends that are owed and in arrears have been paid. In addition, unless the Company has received the affirmative vote or consent of the holders of at least two-thirds of the then outstanding Series A Preferred Shares, voting as a single class, the Company may not create or issue any class or series of capital stock ranking senior to the Series A Preferred Shares with respect to dividends or distributions. So long as any Series A Preferred Shares are outstanding and remain unredeemed, the Company may not, without the vote or consent of the holders of a majority of the Series A Preferred Shares: (i) engage in a merger, consolidation, or share exchange that materially and adversely affects the rights, preferences, or voting power of the Series A Preferred Shares, unless Series A Preferred Shares are converted into or exchanged for (A) cash equal to or greater than the applicable redemption price per share or (B) preferred shares of the surviving entity having rights, preferences, and privileges that are materially the same as those of the Series A Preferred Shares; (ii) amend the Articles of Incorporation or the Certificate of Designation establishing the Series A Preferred Shares to materially and adversely affect the rights, preferences, or voting power of Series A Preferred Shares; or (iii) declare or pay any junior dividends or repurchase any junior securities during any time that all dividends on the Series A Preferred Shares have not been paid in full in cash.

*Transfer Agent and Paying Agent.* Mountain Share Transfer, Inc. will act as the transfer agent and dividend payment agent and registrar in respect of the Series A Preferred Shares.

The foregoing description of the terms pertaining to the Series A Preferred Shares is not complete and is qualified in its entirety by reference to the full text of the Certificate of Designation, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated by reference herein.

**Item 8.01. Other Events.**

On June 9, 2021, the Company issued a press release announcing the pricing of the Offering. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibit**

(d) Exhibits.

The following exhibits are filed with this Current Report on Form 8-K:

<b>Exhibit Number</b>	<b>Description</b>
1.1	<a href="#">Underwriting Agreement, dated June 9, 2021, by and between Harbor Custom Development, Inc. and ThinkEquity, a division of Fordham Financial Management, Inc.</a>
3.1	<a href="#">Certificate of Designation of 8.0% Series A Cumulative Convertible Preferred Stock, filed on June 8, 2021</a>
99.1	<a href="#">Press Release of Harbor Custom Development, Inc., dated June 9, 2021</a>

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**SIGNATURES**

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

**Harbor Custom Development, Inc.**

Date: June 10, 2021

By: /s/ Jeff Habersetzer

Jeff Habersetzer

Chief Operating Officer, Secretary, and General Counsel

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**UNDERWRITING AGREEMENT**

between

**HARBOR CUSTOM DEVELOPMENT, INC.**

And

**THINKEQUITY  
A DIVISION OF FORDHAM FINANCIAL MANAGEMENT, INC.**

as Representative of the Several Underwriters

**HARBOR CUSTOM DEVELOPMENT, INC.**

**UNDERWRITING AGREEMENT**

New York, New York  
June 9, 2021

ThinkEquity  
A Division of Fordham Financial Management, Inc.

As Representative of the Several Underwriters named on Schedule 1 attached hereto

17 State Street, 22<sup>nd</sup> Floor  
New York, New York 10004

Ladies and Gentlemen:

The undersigned, Harbor Custom Development, Inc., a corporation formed under the laws of the State of Washington (collectively with its subsidiaries and affiliates, including, without limitation, all entities disclosed or described in the Registration Statement (as hereinafter defined) as being subsidiaries or affiliates of Harbor Custom Development, Inc., the “**Company**”), hereby confirms its agreement (this “**Agreement**”) with ThinkEquity, a division of Fordham Financial Management, Inc. (hereinafter referred to as “**you**” (including its correlatives) or the “**Representative**”) and with the other underwriters named on Schedule 1 hereto for which the Representative is acting as representative (the Representative and such other underwriters being collectively called the “**Underwriters**” or, individually, an “**Underwriter**”) as follows:

1. Purchase and Sale of Securities.

1.1 Firm Securities.

1.1.1. Nature and Purchase of Firm Securities.

(i) On the basis of the representations and warranties herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell to the several Underwriters, an aggregate of 1,200,000 shares (the “**Firm Shares**”) of its 8.00% Series A Cumulative Convertible Preferred Stock, no par value per share (which we refer to as the “**Series A Preferred Stock**”). Each share of Series A Preferred Stock is initially convertible into 5.556 shares (collectively, the “**Preferred Conversion Shares**”) of the Company’s common stock, no par value per share (the “**Common Stock**”), subject to adjustments as set forth in the Certificate of Designation (as defined below). Each Firm Share will be accompanied by three Common Stock purchase warrants, each of which warrant is exercisable to purchase one share of Common Stock at an initial exercise price of \$5.00 per share (the “**Warrants**”). The 1,200,000 Firm Shares and the 3,600,000 Warrants accompanying the Firm Shares (the “**Firm Warrants**”) are collectively referred to herein as the “**Firm Securities.**”

(ii) The Underwriters, severally and not jointly, agree to purchase from the Company the number of Firm Securities set forth opposite their respective names on Schedule 1 attached hereto and made a part hereof at a purchase price of \$23.25 per one Firm Share and three Firm Warrants (93% of the offering price per one Firm Share and three Firm Warrants, reflecting the Underwriters’ discount). The Firm Securities are to be offered initially to the public at the offering price set forth on the cover page of the Prospectus (as defined in Section 2.1.1 hereof).

1.1.2. Securities Payment and Delivery.

(i) Delivery and payment for the Firm Securities shall be made at 10:00 a.m., Eastern time, on the second (2nd) Business Day following the date of this Agreement or at such earlier time as shall be agreed upon by the Representative and the Company, at the offices of Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, NY 10019 (“**Representative’s Counsel**”), or at such other place (or remotely by facsimile or other electronic transmission) as shall be agreed upon by the Representative and the Company. The hour and date of delivery and payment for the Firm Securities is called the “**Closing Date.**”

(ii) Payment for the Firm Securities shall be made on the Closing Date by wire transfer in Federal (same day) funds, payable to the order of the Company against delivery of the certificates (in form and substance satisfactory to the Underwriters) representing the Firm Shares and the Firm Warrants (or through the facilities of the Depository Trust Company (“**DTC**”)) for the account of the Underwriters. The Firm Shares and Firm Warrants shall be registered in such name or names and in such authorized denominations as the Representative may request in writing at least two (2) full Business Days prior to the Closing Date. The Company shall not be obligated to sell or deliver the Firm Securities except upon tender of payment by the Representative for all of the Firm Securities. The term “**Business Day**” means any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions are authorized or obligated by law to close in New York, New York.

1.2 Over-allotment Option.

1.2.1. Option Securities. For the purposes of covering any over-allotments in connection with the distribution and sale of the Firm Securities, the Company hereby grants to the Underwriters an option to purchase up to 180,000 additional shares of Series A Preferred Stock, representing fifteen percent (15%) of the Firm Shares sold in the offering, and/or up to 540,000 additional Warrants, representing fifteen percent (15%) of the Firm Warrants sold in the offering, from the Company (the “**Over-allotment**”).

**Option**”). Such 180,000 additional shares of Series A Preferred Stock, the net proceeds of which will be deposited in the Company’s account, are hereinafter referred to as “**Option Shares**,” and such 540,000 additional Warrants are hereinafter referred to as “**Option Warrants**,” and collectively as the “**Option Securities**.” The purchase price to be paid by the Underwriters per Option Share shall be \$23.2221 and the purchase price per Option Warrant shall be \$0.0093. The Firm Shares, the Option Shares are hereinafter referred together as the “**Public Shares**,” and the Firm Warrants, Option Warrants are hereinafter referred to as the “**Public Warrants**.” The Firm Securities and the Option Securities are hereinafter referred to together as the “**Public Securities**.” The offering and sale of the Public Securities is hereinafter referred to as the “**Offering**.”

1.2.2. Exercise of Over-allotment Option. The Over-allotment Option granted pursuant to Section 1.2.1 hereof may be exercised by the Representative as to all (at any time) or any part (from time to time) of the Option Securities within 45 days after the date of this Agreement. The Underwriters shall not be under any obligation to purchase any Option Securities prior to the exercise of the Over-allotment Option. The Over-allotment Option granted hereby may be exercised by the giving of oral notice to the Company from the Representative, which must be confirmed in writing by overnight mail or facsimile or other electronic transmission setting forth the number and type of Option Securities to be purchased and the date and time for delivery of and payment for the Option Securities (the “**Option Closing Date**”), which shall not be later than two (2) Business Days after the date of the notice or such other time as shall be agreed upon by the Company and the Representative, at the offices of Representative’s Counsel or at such other place (including remotely by facsimile or other electronic transmission) as shall be agreed upon by the Company and the Representative. If such delivery and payment for the Option Securities does not occur on the Closing Date, the Option Closing Date will be as set forth in the notice. Upon exercise of the Over-allotment Option with respect to all or any portion of the Option Securities, subject to the terms and conditions set forth herein, (i) the Company shall become obligated to sell to the Underwriters the number and type of Option Securities specified in such notice and (ii) each of the Underwriters, acting severally and not jointly, shall purchase that portion of the total number of Option Securities then being purchased as set forth in Schedule 1 opposite the name of such Underwriter.

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1.2.3. Payment and Delivery. Payment for the Option Securities shall be made on the Option Closing Date by wire transfer in Federal (same day) funds, payable to the order of the Company against delivery to you of certificates (in form and substance satisfactory to the Underwriters) representing the Option Securities (or through the facilities of DTC) for the account of the Underwriters. The Option Securities shall be registered in such name or names and in such authorized denominations as the Representative may request in writing at least one (1) full Business Day prior to the Option Closing Date. The Company shall not be obligated to sell or deliver the Option Securities except upon tender of payment by the Representative for the applicable Option Shares.

### 1.3 Representative’s Warrants.

1.3.1. Purchase Warrants. The Company hereby agrees to issue and sell to the Representative (and/or its designees) on the Closing Date two separate warrants (collectively, the “**Representative’s Warrants**”), for an aggregate purchase price of \$100.00. The first of the Representative’s Warrants is a warrant for the purchase of an aggregate of 12,000 shares of Series A Preferred Stock, collectively representing a number of shares of Series A Preferred Stock equal to 1% of the Firm Shares (the “**Representative’s Warrants for Series A Preferred Stock**”). The second of the Representative’s Warrants is a warrant for the purchase of an aggregate of 36,000 Warrants, each exercisable to purchase one share of Common Stock at an initial exercise price of \$5.00 per share of Common Stock, collectively representing a number of Warrants equal to 1% of the Firm Warrants (the “**Representative’s Warrants for Common Stock Warrants**”). The warrant agreement for the Representative’s Warrants for Series A Preferred Stock, in the form attached hereto as Exhibit A-1 (the “**Representative’s Warrant Agreement for Series A Preferred Stock**”), shall be exercisable, in whole or in part, commencing on a date which is one hundred eighty (180) days after the effective date (the “**Effective Date**”) of the Registration Statement (as defined in Section 2.1.1 below) and expiring on the five-year anniversary of the Effective Date, at an initial exercise price per share of Series A Preferred Stock of \$24.97. The warrant agreement for the Representative’s Warrants for Common Stock Warrants, in the form attached hereto as Exhibit A-2 (the “**Representative’s Warrant Agreement for Common Stock Warrants**”), and together with the Representative’s Warrant Agreement for Series A Preferred Stock, the “**Representative’s Warrant Agreements**”), shall be exercisable, in whole or in part, commencing on a date which is one hundred eighty (180) days after the Effective Date and expiring on the five-year anniversary of the Effective Date, at an initial exercise price per Representative’s Warrant for Common Stock Warrant of \$0.01. Underlying each Representative’s Warrant for Common Stock Warrant shall be a Warrant that is the same Warrant as the Public Warrants being offered and sold in the Offering, with the same terms and conditions as the Public Warrants, *including* the initial Exercise Price (as such term is defined in the Public Warrants) of each such Warrant underlying the Representative’s Warrants for Common Stock Warrants shall be \$5.00 per share of Common Stock (the “**Underlying Common Stock Warrants**”). The Underlying Common Stock Warrants issued upon exercise of the Representative’s Warrant for Common Stock Warrants shall be governed by the warrant agency agreement (including all annexes and attachments thereto) between the Company and Mountain Share Transfer, LLC, as warrant agent (the “**Warrant Agent**”), to be executed and delivered by the Company and the Warrant Agent on or prior to the Closing Date, substantially in the form thereof (including the annexes and attachments thereto) filed as Exhibit 4.4 to the Registration Statement (together with all annexes and attachments thereto, the “**Warrant Agency Agreement**”). The Representative’s Warrant Agreement for Series A Preferred Stock and the Representative’s Warrants for Series A Preferred Stock represented thereby, the Representative’s Warrant Agreement for Common Stock Warrants and the Representative’s Warrants for Common Stock Warrants represented thereby, the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock pursuant to the Representative’s Warrant Agreement for Series A Preferred Stock, and the Preferred Conversion Shares issuable upon conversion of such shares of Series A Preferred Stock pursuant to the Certificate of Designation, the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants pursuant to the Representative’s Warrant Agreement for Common Stock Warrants, and the shares of Common Stock issuable upon exercise of the Common Stock Warrants pursuant to the Warrant Agency Agreement are hereinafter referred to collectively as the “**Representative’s Securities**.” The Representative understands and agrees that there are significant restrictions pursuant to FINRA Rule 5110 against transferring the Representative’s Securities during the one hundred eighty (180) days immediately following the Effective Date and by its acceptance thereof shall agree that the Representative’s Securities shall not be sold during the Offering, or sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the Representative’s Securities by any person for a period of one hundred eighty (180) days immediately following the Effective Date, except as provided for in FINRA Rule 5110(e)(2).

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1.3.2. Delivery. Delivery of the Representative’s Warrant Agreements shall be made on the Closing Date and shall be issued in the name or names and in such authorized denominations as the Representative may request.

2. Representations and Warranties of the Company. The Company represents and warrants to the Underwriters as of the Applicable Time (as defined below), as of the Closing Date and as of the Option Closing Date, if any, as follows:

#### 2.1 Filing of Registration Statement.

2.1.1. Pursuant to the Securities Act. The Company has filed with the U.S. Securities and Exchange Commission (the “**Commission**”) a registration statement, including any amendment or amendments thereto, on Form S-1 (File No. 333-255229), including any related prospectus or prospectuses, for the registration of the Public Securities and the Representative’s Securities under the Securities Act of 1933, as amended (the “**Securities Act**”), which registration statement and amendment or amendments have been prepared by the Company in all material respects in conformity with the requirements of the Securities Act and the rules and regulations of the Commission under the Securities Act (the “**Securities Act Regulations**”) and will contain all material statements that are required to be stated therein in accordance with the Securities Act and the Securities Act Regulations. Except as the context may otherwise require, such registration statement, as amended, on file with the Commission at the time the registration statement became effective (including the Preliminary Prospectus included in the registration statement, financial statements, schedules, exhibits and all other documents filed as a part thereof or incorporated therein and all information deemed to be a part thereof as of the Effective Date pursuant to paragraph (b) of Rule 430A of the Securities Act Regulations (the “**Rule 430A Information**”), is referred to herein as the “**Registration Statement**.” If the Company files any registration statement pursuant to Rule 462(b) of the Securities Act Regulations, then after such filing, the term “**Registration Statement**” shall include such registration statement filed pursuant to Rule 462(b). The Registration Statement has been declared effective by the Commission on the date hereof.

Each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of this Agreement, is herein called a “**Preliminary Prospectus**.” The Preliminary Prospectus, subject to completion, dated May 20, 2021, that was included in the Registration Statement immediately prior to the Applicable Time is hereinafter called the “**Pricing Prospectus**.” The final prospectus in the form first furnished to the Underwriters for use in the Offering is hereinafter called the “**Prospectus**.” Any reference to the “most recent Preliminary Prospectus” shall be deemed to refer to the latest Preliminary Prospectus included in the Registration Statement.

“**Applicable Time**” means 9:00 a.m., Eastern time, on the date of this Agreement.

“**Issuer Free Writing Prospectus**” means any “issuer free writing prospectus,” as defined in Rule 433 of the Securities Act Regulations (“**Rule 433**”), including without limitation any “free writing prospectus” (as defined in Rule 405 of the Securities Act Regulations) relating to the Public Securities that is (i) required to be filed with the Commission by the Company, (ii) a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Public Securities or of the Offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Issuer General Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a “*bona fide* electronic road show,” as defined in Rule 433), as evidenced by its being specified in Schedule 2-B hereto.

“**Issuer Limited Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

“**Pricing Disclosure Package**” means any Issuer General Use Free Writing Prospectus issued at or prior to the Applicable Time, the Pricing Prospectus and the information included on Schedule 2-A hereto, all considered together.

2.1.2. Pursuant to the Exchange Act, The Company has filed with the Commission a Form 8-A (File Number 001-39266) (the “**Common Stock Form 8-A**”) providing for the registration pursuant to Section 12(b) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of the Common Stock, including (i) the Preferred Conversion Shares issuable upon conversion of (A) the Public Shares and (B) the Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and (ii) the shares of Common Stock issuable upon exercise of (A) the Public Warrants and (B) the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants. The Common Stock Form 8-A became effective under Section 12 of the Exchange Act on July 14, 2020 and remains effective, and the Common Stock is registered pursuant to Section 12(b) under the Exchange Act. The Company has also filed with the Commission a Form 8-A (File Number 001-39266) (the “**Form 8-A**”) providing for the registration pursuant to Section 12(b) under the Exchange Act of (x) the Series A Preferred Stock, including the Public Shares and the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and (y) the Warrants, including the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants. The Form 8-A has become effective under Section 12 of the Exchange Act prior to the Applicable Time, and the Series A Preferred Stock, including the Public Shares and the Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and the Warrants, including the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants, are registered pursuant to Section 12(b) under the Exchange Act. The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock (including the shares of Common Stock referred to in clauses (i) and (ii) above), the Series A Preferred Stock (including the shares of Series A Preferred Stock referred to in clause (x) above) or the Warrants (including the Warrants referred to in clause (y) above) under the Exchange Act, nor has the Company received any notification that the Commission is contemplating terminating such registration.

2.2 Stock Exchange Listing. (i) The Common Stock is listed on The Nasdaq Capital Market (the “**Exchange**”) under the symbol “HDCL” (ii) the Company has submitted the Listing of Additional Shares Notification Form with the Exchange with respect to (A) the Preferred Conversion Shares issuable upon conversion of the Public Shares and upon conversion of the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and (B) the shares of Common Stock issuable upon exercise of the Public Warrants and upon exercise of the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants, and all of such shares of Common Stock referred to in this clause (ii) have been approved for listing on the Exchange, and (iii) (A) the Series A Preferred Stock, including the Public Shares and the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and (B) the Warrants, including the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants, have been approved for listing on the Exchange, subject to official notice of issuance. The Company has taken no action designed to, or likely to have the effect of, delisting the Common Stock, including the shares of Common Stock referred to in clause (ii) above, the Series A Preferred Stock, including the shares of Series A Preferred Stock referred to in clause (iii) (A) above, or the Warrants, including the Warrants referred to in clause (iii)(B) above, from the Exchange, nor has the Company received any notification that the Exchange is contemplating terminating such listing.

2.3 No Stop Orders, etc. Neither the Commission nor, to the Company’s knowledge, any state regulatory authority has issued any order preventing or suspending the use of the Registration Statement, any Preliminary Prospectus or the Prospectus or has instituted or, to the Company’s knowledge, threatened to institute, any proceedings with respect to such an order. The Company has complied with each request (if any) from the Commission for additional information.

#### 2.4 Disclosures in Registration Statement.

##### 2.4.1. Compliance with Securities Act and 10b-5 Representation.

(i) Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the requirements of the Securities Act and the Securities Act Regulations. Each Preliminary Prospectus, including the prospectus filed as part of the Registration Statement as originally filed or as part of any amendment or supplement thereto, and the Prospectus, at the time each was filed with the Commission, complied in all material respects with the requirements of the Securities Act and the Securities Act Regulations. Each Preliminary Prospectus delivered to the Underwriters for use in connection with this Offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(ii) Neither the Registration Statement nor any amendment thereto, at its effective time, as of the Applicable Time, at the Closing Date or at any Option Closing Date (if any), contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(iii) The Pricing Disclosure Package, as of the Applicable Time, at the Closing Date or at any Option Closing Date (if any), did not, does not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each Issuer Limited Use Free Writing Prospectus hereto does not conflict with the information contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, and each such Issuer Limited Use Free Writing Prospectus, as supplemented by and taken together with the Pricing Prospectus as of the Applicable Time, did not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to statements made or statements omitted in reliance upon and in conformity with written information furnished to the Company with respect to the Underwriters by the Representative expressly for use in the Registration Statement, the Pricing Prospectus or the Prospectus or any amendment thereof or supplement thereto. The parties acknowledge and agree that such information provided by or on behalf of any Underwriter consists solely of the following disclosure contained in the “Underwriting” section of the Prospectus: (i) the table showing the

number of securities to be purchased by each Underwriter, (ii) the second sentence of the first paragraph under the subsection titled “Discounts and Commissions,” and (iii) the disclosures under the subsections titled “Discretionary Accounts,” “Electronic Distribution,” “Passive Market Marketing,” the first paragraph under the subsection “Stabilization” and the disclosure under the subsection “Selling Restrictions” (the “**Underwriters’ Information**”).

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(iv) Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Date or at any Option Closing Date, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to the Underwriters’ Information.

2.4.2. Disclosure of Agreements. The agreements and documents described in the Registration Statement, the Pricing Disclosure Package and the Prospectus conform in all material respects to the descriptions thereof contained therein and there are no agreements or other documents required by the Securities Act and the Securities Act Regulations to be described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or to be filed with the Commission as exhibits to the Registration Statement, that have not been so described or filed. Each agreement or other instrument (however characterized or described) to which the Company is a party or by which it is or may be bound or affected and (i) that is referred to in the Registration Statement, the Pricing Disclosure Package and the Prospectus, or (ii) is material to the Company’s business, has been duly authorized and validly executed by the Company, is in full force and effect in all material respects and is enforceable against the Company and, to the Company’s knowledge, the other parties thereto, in accordance with its terms, except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors’ rights generally, (y) as enforceability of any indemnification or contribution provision may be limited under the federal and state securities laws, and (z) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefor may be brought. None of such agreements or instruments has been assigned by the Company, and neither the Company nor, to the Company’s knowledge, any other party is in default thereunder and, to the Company’s knowledge, no event has occurred that, with the lapse of time or the giving of notice, or both, would constitute a default thereunder. To the best of the Company’s knowledge, performance by the Company of the material provisions of such agreements or instruments will not result in a violation of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its assets or businesses (each, a “**Governmental Entity**”), including, without limitation, those relating to environmental laws and regulations.

2.4.3. Prior Securities Transactions. No securities of the Company have been sold by the Company or by or on behalf of, or for the benefit of, any person or persons controlling, controlled by or under common control with the Company, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Preliminary Prospectus.

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2.4.4. Regulations. The disclosures in the Registration Statement, the Pricing Disclosure Package and the Prospectus concerning the effects of federal, state, local and all foreign regulation on the Offering and the Company’s business as currently contemplated are correct in all material respects and no other such regulations are required to be disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus which are not so disclosed.

2.4.5. Disclosures in Commission Filings. Since August 28, 2020, (i) none of the Company’s filings with the Commission contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (ii) the Company has made all filings with the Commission required under the Exchange Act and the rules and regulations of the Commission promulgated thereunder (the “**Exchange Act Regulations**”).

2.4.6. No Other Distribution of Offering Materials. The Company has not, directly or indirectly, distributed and will not distribute to public investors any offering material in connection with the Offering other than any Preliminary Prospectus, the Prospectus and other materials, if any, permitted under the Securities Act and consistent with Section 3.2 below.

## 2.5 Changes After Dates in Registration Statement.

2.5.1. No Material Adverse Change. Since the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except as otherwise specifically stated therein: (i) there has been no material adverse change in the financial position or results of operations of the Company, nor any change or development that, singularly or in the aggregate, would involve a material adverse change or a prospective material adverse change, in or affecting the condition (financial or otherwise), results of operations, business, assets or prospects of the Company (a “**Material Adverse Change**”); (ii) there have been no material transactions entered into by the Company, other than as contemplated pursuant to this Agreement; and (iii) no officer or director of the Company has resigned from any position with the Company.

2.5.2. Recent Securities Transactions, etc. Subsequent to the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, and except as may otherwise be indicated or contemplated herein or disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has not: (i) issued any securities or incurred any liability or obligation, direct or contingent, for borrowed money; or (ii) declared or paid any dividend or made any other distribution on or in respect to its capital stock.

2.6 Independent Accountants. To the knowledge of the Company, Rosenberg Rich Baker Berman, P.A. (the “**Auditor**”), whose report is filed with the Commission as part of the Registration Statement, the Pricing Disclosure Package and the Prospectus, is an independent registered public accounting firm as required by the Securities Act and the Securities Act Regulations and the Public Company Accounting Oversight Board. The Auditor has not, during the periods covered by the financial statements included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, provided to the Company any non-audit services, as such term is used in Section 10A(g) of the Exchange Act.

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2.7 Financial Statements, etc. The financial statements, including the notes thereto and supporting schedules included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, fairly present the financial position and the results of operations of the Company at the dates and for the periods to which they apply; and such financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“**GAAP**”), consistently applied throughout the periods involved (provided that unaudited interim financial statements are subject to year-end audit adjustments that are not expected to be material in the aggregate and do not contain all footnotes required by GAAP); and the supporting schedules included in the Registration Statement present fairly the information required to be stated therein. Except as included therein, no historical or pro forma financial statements are required to be included in the Registration Statement, the Pricing Disclosure Package or the Prospectus under the Securities Act or the Securities Act Regulations. The pro forma and pro forma as adjusted financial information and the related notes, if any, included in the Registration Statement, the Pricing Disclosure Package and the Prospectus have been properly compiled and prepared in accordance with the applicable requirements of the Securities Act and the Securities Act Regulations and present fairly, in all material respects, the information shown therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. All disclosures contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission), if any, comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Securities Act, to the extent applicable. Each of the Registration Statement, the Pricing Disclosure Package and the Prospectus discloses all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the

Company with unconsolidated entities or other persons that may have a material current or future effect on the Company's financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (a) neither the Company nor any of its direct and indirect subsidiaries, including each entity disclosed or described in the Registration Statement, the Pricing Disclosure Package and the Prospectus as being a subsidiary of the Company (each, a "Subsidiary" and, collectively, the "Subsidiaries"), has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions other than in the ordinary course of business, (b) the Company has not declared or paid any dividends or made any distribution of any kind with respect to its capital stock, (c) there has not been any change in the capital stock of the Company or any of its Subsidiaries, or, other than in the course of business, any grants under any stock compensation plan, and (d) there has not been any material adverse change in the Company's long-term or short-term debt.

**2.8 Authorized Capital; Options, etc.** The Company had, at the date or dates indicated in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the duly authorized, issued and outstanding capitalization as set forth therein. Based on the assumptions stated in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company will have on the Closing Date the adjusted stock capitalization set forth therein. Except as set forth in, or contemplated by, the Registration Statement, the Pricing Disclosure Package and the Prospectus, on the Effective Date, as of the Applicable Time and on the Closing Date and any Option Closing Date, there will be no stock options, warrants, or other rights to purchase or otherwise acquire any authorized, but unissued shares of Common Stock or Series A Preferred Stock of the Company or any security convertible or exercisable into shares of Common Stock or shares of Series A Preferred Stock of the Company, or any contracts or commitments to issue or sell shares of Common Stock or shares of Series A Preferred Stock or any such options, warrants, rights or convertible securities.

## **2.9 Valid Issuance of Securities, etc.**

**2.9.1. Outstanding Securities.** All issued and outstanding securities of the Company issued prior to the transactions contemplated by this Agreement have been duly authorized and validly issued and are fully paid and non-assessable; the holders thereof have no rights of rescission with respect thereto, and are not subject to personal liability by reason of being such holders; and none of such securities were issued in violation of the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company. The authorized shares of Common Stock and Series A Preferred Stock, the Public Warrants and the Representative's Securities conform in all material respects to all statements relating thereto contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus. The offers and sales of the outstanding shares of Common Stock, and the offers and sales of the Public Securities and the Representative's Securities, including the securities underlying the Public Securities and the Representative's Securities, were at all relevant times either registered under the Securities Act and the applicable state securities or "blue sky" laws or, based in part on the representations and warranties of the purchasers of such securities, exempt from such registration requirements. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, accurately and fairly present, in all material respects, the information required to be shown with respect to such plans, arrangements, options and rights.

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**2.9.2. Securities Sold Pursuant to this Agreement.** The Public Securities and Representative's Securities have been duly authorized for issuance and sale and, when issued and paid for, will be validly issued, fully paid and non-assessable, and the holders thereof are not and will not be subject to personal liability by reason of being such holders. The Public Securities and Representative's Securities are not and will not be subject to the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company, and all corporate action required to be taken for the authorization, issuance and sale of the Public Securities and Representative's Securities has been duly and validly taken. The Public Securities and Representative's Securities conform in all material respects to all statements with respect thereto contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus. All corporate action required to be taken for the authorization, issuance and sale of the Representative's Warrant Agreements has been duly and validly taken; the shares of Series A Preferred Stock, shares of Common Stock and/or warrants issuable upon exercise of the Representative's Warrants, as applicable, the Preferred Conversion Shares issuable upon conversion of the shares of Series A Preferred Stock issuable upon exercise of the Representative's Warrants for Preferred Shares, and the shares of Common Stock issuable upon exercise of the Underlying Common Stock Warrants issuable upon exercise of the Representative's Warrants for Common Stock Warrants, in each case, have been duly authorized and reserved for issuance by all necessary corporate action on the part of the Company and when paid for and issued in accordance with the terms of this Agreement, the applicable Representative's Warrant Agreement or the Warrant Agency Agreement, as applicable, such underlying shares of Series A Preferred Stock, underlying shares of Common Stock and underlying warrants, as applicable, will be validly issued, fully paid and non-assessable, are not and will not be subject to the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company, and the holders thereof are not and will not be subject to personal liability by reason of being such holders.

**2.10 Registration Rights of Third Parties.** Except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, no holders of any securities of the Company or any rights exercisable for or convertible or exchangeable into securities of the Company have the right to require the Company to register any such securities of the Company under the Securities Act or to include any such securities in a registration statement to be filed by the Company.

**2.11 Validity and Binding Effect of Agreements.** This Agreement, the Representative's Warrant Agreements and the Warrant Agency Agreement have been duly and validly authorized by the Company, and, when executed and delivered, will constitute, the valid and binding agreements of the Company, enforceable against the Company in accordance with their respective terms, except: (i) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally; (ii) as enforceability of any indemnification or contribution provision may be limited under the federal and state securities laws; and (iii) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

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**2.12 No Conflicts, etc.** The execution, delivery and performance by the Company of this Agreement, the Representative's Warrant Agreements and the Warrant Agency Agreement and all ancillary documents, the consummation by the Company of the transactions herein and therein contemplated and the compliance by the Company with the terms hereof and thereof do not and will not, with or without the giving of notice or the lapse of time or both: (i) result in a material breach of, or conflict with any of the terms and provisions of, or constitute a material default under, or result in the creation, modification, termination or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any agreement or instrument to which the Company is a party; (ii) result in any violation of the provisions of the Company's Articles of Incorporation (as the same may be amended or restated from time to time, the "Charter") or the by-laws of the Company; or (iii) violate any existing applicable law, rule, regulation, judgment, order or decree of any Governmental Entity as of the date hereof.

**2.13 No Defaults: Violations.** No material default exists in the due performance and observance of any term, covenant or condition of any material license, contract, indenture, mortgage, deed of trust, note, loan or credit agreement, or any other agreement or instrument evidencing an obligation for borrowed money, or any other material agreement or instrument to which the Company is a party or by which the Company may be bound or to which any of the properties or assets of the Company is subject. The Company is not in violation of any term or provision of its Charter or by-laws, or in violation of any franchise, license, permit, applicable law, rule, regulation, judgment or decree of any Governmental Entity.

## **2.14 Corporate Power; Licenses; Consents.**

**2.14.1. Conduct of Business.** Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has all requisite corporate power and authority, and has all necessary authorizations, approvals, orders, licenses, certificates and permits of and from all governmental regulatory officials and bodies that it needs as of the date hereof to conduct its business purpose as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

**2.14.2. Transactions Contemplated Herein.** The Company has all corporate power and authority to enter into this Agreement and to carry out the provisions and



conditions hereof, and all consents, authorizations, approvals and orders required in connection therewith have been obtained. No consent, authorization or order of, and no filing with, any court, government agency or other body is required for the valid issuance, sale and delivery of the Public Securities and the consummation of the transactions and agreements contemplated by this Agreement, the Representative's Warrant Agreements and the Warrant Agency Agreement and as contemplated by the Registration Statement, the Pricing Disclosure Package and the Prospectus, except with respect to applicable federal and state securities laws and the rules and regulations of the Financial Industry Regulatory Authority, Inc. ("FINRA").

2.15 D&O Questionnaires. To the Company's knowledge, all information contained in the questionnaires (the "Questionnaires") completed by each of the Company's directors and officers immediately prior to the Offering (the "Insiders") as supplemented by all information concerning the Company's directors, officers and principal shareholders as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, as well as in the Lock-Up Agreement (as defined in Section 2.24 below), provided to the Underwriters, is true and correct in all material respects and the Company has not become aware of any information which would cause the information disclosed in the Questionnaires to become materially inaccurate and incorrect.

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2.16 Litigation; Governmental Proceedings. There is no action, suit, proceeding, inquiry, arbitration, investigation, litigation or governmental proceeding pending or, to the Company's knowledge, threatened against, or involving the Company or, to the Company's knowledge, any executive officer or director which has not been disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus or in connection with the Company's listing application for the listing of the Public Securities on the Exchange.

2.17 Good Standing. The Company has been duly organized and is validly existing as a corporation and is in good standing under the laws of the State of Washington as of the date hereof, and is duly qualified to do business and is in good standing in each other jurisdiction in which its ownership or lease of property or the conduct of business requires such qualification, except where the failure to qualify, singularly or in the aggregate, would not have or reasonably be expected to result in a Material Adverse Change.

2.18 Insurance. The Company carries or is entitled to the benefits of insurance, with reputable insurers, in such amounts and covering such risks which the Company believes are adequate, including, but not limited to, general liability insurance coverage at least equal to \$1,000,000 and the Company has included each Underwriter as an additional insured party to its general liability insurance coverage and all such insurance is in full force and effect. The Company has no reason to believe that it will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change.

2.19 Transactions Affecting Disclosure to FINRA.

2.19.1. Finder's Fees. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no claims, payments, arrangements, agreements or understandings relating to the payment of a finder's, consulting or origination fee by the Company or any Insider with respect to the sale of the Public Securities hereunder or any other arrangements, agreements or understandings of the Company or, to the Company's knowledge, any of its shareholders that may affect the Underwriters' compensation, as determined by FINRA.

2.19.2. Payments Within Twelve (12) Months. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has not made any direct or indirect payments (in cash, securities or otherwise) to: (i) any person, as a finder's fee, consulting fee or otherwise, in consideration of such person raising capital for the Company or introducing to the Company persons who raised or provided capital to the Company; (ii) any FINRA member; or (iii) any person or entity that has any direct or indirect affiliation or association with any FINRA member, within the twelve (12) months prior to the Effective Date, other than the payment to the Underwriters as provided hereunder in connection with the Offering.

2.19.3. Use of Proceeds. None of the net proceeds of the Offering will be paid by the Company to any participating FINRA member or its affiliates, except as specifically authorized herein.

2.19.4. FINRA Affiliation. There is no (i) officer or director of the Company, (ii) beneficial owner of 5% or more of any class of the Company's securities or (iii) beneficial owner of the Company's unregistered equity securities which were acquired during the 180-day period immediately preceding the filing of the Registration Statement that is an affiliate or associated person of a FINRA member participating in the Offering (as determined in accordance with the rules and regulations of FINRA).

2.19.5. Information. All information provided by the Company in its FINRA questionnaire to Representative's Counsel specifically for use by Representative's Counsel in connection with its Public Offering System filings (and related disclosure) with FINRA is true, correct and complete in all material respects.

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2.20 Foreign Corrupt Practices Act. None of the Company and its Subsidiaries or, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company and its Subsidiaries or any other person acting on behalf of the Company and its Subsidiaries, has, directly or indirectly, given or agreed to give any money, gift or similar benefit (other than legal price concessions to customers in the ordinary course of business) to any customer, supplier, employee or agent of a customer or supplier, or official or employee of any governmental agency or instrumentality of any government (domestic or foreign) or any political party or candidate for office (domestic or foreign) or other person who was, is, or may be in a position to help or hinder the business of the Company (or assist it in connection with any actual or proposed transaction) that (i) might subject the Company to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) if not given in the past, might have had a Material Adverse Change or (iii) if not continued in the future, might adversely affect the assets, business, operations or prospects of the Company. The Company has taken reasonable steps to ensure that its accounting controls and procedures are sufficient to cause the Company to comply in all material respects with the Foreign Corrupt Practices Act of 1977, as amended.

2.21 Compliance with OFAC. None of the Company and its Subsidiaries or, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company and its Subsidiaries or any other person acting on behalf of the Company and its Subsidiaries, is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), and the Company will not, directly or indirectly, use the proceeds of the Offering hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

2.22 Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any Governmental Entity involving the Company with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

2.23 Officers' Certificate. Any certificate signed by any duly authorized officer of the Company and delivered to you or to Representative's Counsel shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby.

2.24 Lock-Up Agreements. Schedule 3 hereto contains a complete and accurate list of the Company's officers, directors and certain owners of the Company's outstanding shares of Common Stock (or securities convertible or exercisable into shares of Common Stock) (collectively, the "Lock-Up Parties"). The Company has caused each of the Lock-

Up Parties to deliver to the Representative an executed Lock-Up Agreement, in the form attached hereto as Exhibit B (the “**Lock-Up Agreement**”), prior to the execution of this Agreement.

2.25 Subsidiaries. All direct and indirect Subsidiaries of the Company are duly organized and in good standing under the laws of the place of organization or incorporation, and each Subsidiary is in good standing in each jurisdiction in which its ownership or lease of property or the conduct of business requires such qualification, except where the failure to qualify would not have a material adverse effect on the assets, business or operations of the Company taken as a whole. The Company’s ownership and control of each Subsidiary is as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

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## 2.26 Related Party Transactions.

2.26.1 Business Relationships. There are no business relationships or related party transactions involving the Company or any of its Subsidiaries or any other person required to be described in the Registration Statement, the Pricing Disclosure Package and the Prospectus that have not been described as required.

2.26.2 No Relationships with Customers and Suppliers. No relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company, its Subsidiaries or any of the Company’s affiliates, on the other hand, which is required to be described in the Pricing Disclosure Package and the Prospectus or a document incorporated by reference therein and which is not so described.

2.26.3 No Unconsolidated Entities. There are no transactions, arrangements or other relationships between and/or among the Company, any of its Subsidiaries or affiliates (as such term is defined in Rule 405 of the Securities Act) and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity that could reasonably be expected to materially affect the Company’s liquidity or the availability of or requirements for its capital resources required to be described in the Pricing Disclosure Package and the Prospectus or a document incorporated by reference therein which have not been described as required.

2.26.4 No Loans or Advances to Affiliates. There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of their respective family members, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

2.27 Board of Directors. The Board of Directors of the Company is comprised of the persons set forth under the heading of the Pricing Prospectus and the Prospectus captioned “Management.” The qualifications of the persons serving as board members and the overall composition of the board comply with the Exchange Act, the Exchange Act Regulations the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder (the “**Sarbanes-Oxley Act**”) applicable to the Company and the listing rules of the Exchange. At least one member of the Audit Committee of the Board of Directors of the Company qualifies as an “audit committee financial expert,” as such term is defined under Regulation S-K and the listing rules of the Exchange.

## 2.28 Sarbanes-Oxley Compliance.

2.28.1 Disclosure Controls. The Company has developed and currently maintains disclosure controls and procedures that will comply with Rule 13a-15 or 15d-15 under the Exchange Act Regulations, and such controls and procedures are effective to ensure that all material information concerning the Company will be made known on a timely basis to the individuals responsible for the preparation of the Company’s Exchange Act filings and other public disclosure documents.

2.28.2 Compliance. The Company is, or at the Applicable Time and on the Closing Date will be, in material compliance with the provisions of the Sarbanes-Oxley Act applicable to it, and has implemented or will implement such programs and taken reasonable steps to ensure the Company’s future compliance (not later than the relevant statutory and regulatory deadlines therefor) with all of the material provisions of the Sarbanes-Oxley Act.

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2.29 Accounting Controls. The Company and its Subsidiaries maintain systems of “internal control over financial reporting” (as defined under Rules 13a-15 and 15d-15 under the Exchange Act Regulations) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their respective principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including, but not limited to, 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. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company is not aware of any material weaknesses in its internal controls. The Company’s auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are known to the Company’s management and that have adversely affected or are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and (ii) any fraud known to the Company’s management, whether or not material, that involves management or other employees who have a significant role in the Company’s internal controls over financial reporting.

2.30 No Investment Company Status. The Company is not and, after giving effect to the Offering and the application of the proceeds thereof as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, will not be, required to register as an “investment company,” as defined in the Investment Company Act of 1940, as amended.

2.31 No Labor Disputes. No labor dispute with the employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company, is imminent. The Company is not aware that any key employee or significant group of employees of the Company or any of its Subsidiaries plans to terminate employment with the Company or any of its Subsidiaries.

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2.32 Intellectual Property Rights. The Company and each of its Subsidiaries owns or possesses or has valid rights to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, inventions, trade secrets and similar rights (“**Intellectual Property Rights**”) necessary for the conduct of the business of the Company and its Subsidiaries as currently carried on and as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus. To the knowledge of the Company, no action or use by the Company or any of its Subsidiaries necessary for the conduct of its business as currently carried on and as described in the Registration Statement and the Prospectus will involve or give rise to any infringement of, or license or similar fees for, any Intellectual Property Rights of others. Neither the Company nor any of its Subsidiaries has received any notice alleging any such infringement, fee or conflict with asserted Intellectual Property Rights of others. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change (A) to the knowledge of the Company, there is no infringement, misappropriation or violation by third parties of any of the Intellectual Property Rights owned by the Company; (B) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the rights of the Company in or to any such Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim, that would, individually or in the aggregate, together with any other claims in this Section 2.32, reasonably be

expected to result in a Material Adverse Change; (C) the Intellectual Property Rights owned by the Company and, to the knowledge of the Company, the Intellectual Property Rights licensed to the Company have not been adjudged by a court of competent jurisdiction invalid or unenforceable, in whole or in part, and there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim that would, individually or in the aggregate, together with any other claims in this Section 2.32, reasonably be expected to result in a Material Adverse Change; (D) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company infringes, misappropriates or otherwise violates any Intellectual Property Rights or other proprietary rights of others, the Company has not received any written notice of such claim and the Company is unaware of any other facts which would form a reasonable basis for any such claim that would, individually or in the aggregate, together with any other claims in this Section 2.32, reasonably be expected to result in a Material Adverse Change; and (E) to the Company's knowledge, no employee of the Company is in or has ever been in violation in any material respect of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company, or actions undertaken by the employee while employed with the Company and could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change. To the Company's knowledge, all material technical information developed by and belonging to the Company which has not been patented has been kept confidential. The Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus and are not described therein. The Registration Statement, the Pricing Disclosure Package and the Prospectus contain in all material respects the same description of the matters set forth in the preceding sentence. None of the technology employed by the Company has been obtained or is being used by the Company in violation of any contractual obligation binding on the Company or, to the Company's knowledge, any of its officers, directors or employees, or otherwise in violation of the rights of any persons..

**2.33 Taxes.** Each of the Company and its Subsidiaries has filed all returns (as hereinafter defined) required to be filed with taxing authorities prior to the date hereof or has duly obtained extensions of time for the filing thereof. Each of the Company and its Subsidiaries has paid all taxes (as hereinafter defined) shown as due on such returns that were filed and has paid all taxes imposed on or assessed against the Company or such respective Subsidiary. The provisions for taxes payable, if any, shown on the financial statements filed with or as part of the Registration Statement are sufficient for all accrued and unpaid taxes, whether or not disputed, and for all periods to and including the dates of such consolidated financial statements. Except as disclosed in writing to the Underwriters, (i) no issues have been raised (and are currently pending) by any taxing authority in connection with any of the returns or taxes asserted as due from the Company or its Subsidiaries, and (ii) no waivers of statutes of limitation with respect to the returns or collection of taxes have been given by or requested from the Company or its Subsidiaries. As of the date of this Agreement, there are no material tax liens against the assets, properties or business of the Company. The term "taxes" means all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto. The term "returns" means all returns, declarations, reports, statements and other documents required to be filed in respect to taxes.

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**2.34 ERISA Compliance.** The Company and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA")) established or maintained by the Company or its "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "ERISA Affiliate" means, with respect to the Company, any member of any group of organizations described in Sections 414(b),(c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "Code") of which the Company is a member. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company or any of its ERISA Affiliates. No "employee benefit plan" established or maintained by the Company or any of its ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA). Neither the Company nor any of its ERISA Affiliates has incurred or reasonably expects to incur any material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each "employee benefit plan" established or maintained by the Company or any of its ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and, to the knowledge of the Company, nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

**2.35 Compliance with Laws.** The Company: (A) is and at all times has been in compliance with all statutes, rules, or regulations applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured or distributed by the Company ("Applicable Laws"), except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change; (B) has not received any warning letter, untitled letter or other correspondence or notice from any other governmental authority alleging or asserting noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("Authorizations"); (C) possesses all material Authorizations and such Authorizations are valid and in full force and effect and are not in material violation of any term of any such Authorizations; (D) has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any governmental authority or third party alleging that any product operation or activity is in violation of any Applicable Laws or Authorizations and has no knowledge that any such governmental authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (E) has not received notice that any governmental authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such governmental authority is considering such action; and (F) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct on the date filed (or were corrected or supplemented by a subsequent submission)..

**2.36 Ineligible Issuer.** At the time of filing the Registration Statement and any post-effective amendment thereto, at the time of effectiveness of the Registration Statement and any amendment thereto, at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the Securities Act Regulations) of the Public Securities and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

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**2.37 Environmental Laws.** The Company and its Subsidiaries are in compliance with all foreign, federal, state and local rules, laws and regulations relating to the use, treatment, storage and disposal of hazardous or toxic substances or waste and protection of health and safety or the environment which are applicable to their businesses ("Environmental Laws"), except where the failure to comply would not, singularly or in the aggregate, result in a Material Adverse Change. There has been no storage, generation, transportation, handling, treatment, disposal, discharge, emission, or other release of any kind of toxic or other wastes or other hazardous substances by, due to, or caused by the Company or any of its Subsidiaries (or, to the Company's knowledge, any other entity for whose acts or omissions the Company or any of its Subsidiaries is or may otherwise be liable) upon any of the property now or previously owned or leased by the Company or any of its Subsidiaries, or upon any other property, in violation of any law, statute, ordinance, rule, regulation, order, judgment, decree or permit or which would, under any law, statute, ordinance, rule (including rule of common law), regulation, order, judgment, decree or permit, give rise to any liability, except for any violation or liability which would not have, singularly or in the aggregate with all such violations and liabilities, a Material Adverse Change; and there has been no disposal, discharge, emission or other release of any kind onto such property or into the environment surrounding such property of any toxic or other wastes or other hazardous substances with respect to which the Company has knowledge, except for any such disposal, discharge, emission, or other release of any kind which would not have, singularly or in the aggregate with all such discharges and other releases, a Material Adverse Change. In the ordinary course of business, the Company and its Subsidiaries conduct periodic reviews of the effect of Environmental Laws on their business and assets, in the course of which they identify and evaluate associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or governmental permits issued thereunder, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such reviews, the Company and its Subsidiaries have reasonably concluded that such associated costs and liabilities would not have, singularly or in the aggregate, a Material Adverse Change.

**2.38 Real Property.** Except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company and each of its Subsidiaries have

good and marketable title in fee simple to, or have valid rights to lease or otherwise use, all items of real or personal property which are material to the business of the Company and its Subsidiaries taken as a whole, in each case free and clear of all liens, encumbrances, security interests, claims and defects that do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its Subsidiaries; and all of the leases and subleases material to the business of the Company and its Subsidiaries, considered as one enterprise, and under which the Company or any of its Subsidiaries holds properties described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, are in full force and effect, and neither the Company nor any Subsidiary has received any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such Subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease.

**2.39 Contracts Affecting Capital.** There are no transactions, arrangements or other relationships between and/or among the Company, any of its affiliates (as such term is defined in Rule 405 of the Securities Act Regulations) and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity that could reasonably be expected to materially affect the Company's or any of its Subsidiaries' liquidity or the availability of or requirements for their capital resources required to be described or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus which have not been described or incorporated by reference as required.

**2.40 Loans to Directors or Officers.** There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company or any of its Subsidiaries to or for the benefit of any of the officers or directors of the Company, any of its Subsidiaries or any of their respective family members, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

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**2.41 Smaller Reporting Company.** As of the time of filing of the Registration Statement, the Company was a "smaller reporting company," as defined in Rule 12b-2 of the Exchange Act Regulations.

**2.42 Industry Data.** The statistical and market-related data included in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus are based on or derived from sources that the Company reasonably and in good faith believes are reliable and accurate or represent the Company's good faith estimates that are made on the basis of data derived from such sources.

**2.43 Emerging Growth Company.** From the time of the initial submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly in or through any Person authorized to act on its behalf in any Testing-the Waters Communication) through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Securities Act (an "**Emerging Growth Company**"). "Testing-the-Waters Communication" means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act.

**2.44 Exchange Act Reports.** The Company is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act and has filed all reports and other materials required to be filed pursuant to Sections 13(a), 14 or 15(d) during the preceding 12 months or such shorter period as the Company was required to file such reports and materials. The Company has filed in a timely manner all reports required to be filed pursuant to Sections 13(a), 13(e), 14 and 15(d) of the Exchange Act during the preceding 12 months or such shorter period as the Company was required to file such reports and materials.

**2.45 Testing-the-Waters Communications.** The Company has not (i) alone engaged in any Testing-the-Waters Communications, other than Testing-the-Waters Communications with the written consent of the Representative and with entities that are qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are accredited investors within the meaning of Rule 501 under the Securities Act and (ii) authorized anyone other than the Representative to engage in Testing-the-Waters Communications. The Company confirms that the Representative has been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications other than those listed on Schedule 2-C hereto. "**Written Testing-the-Waters Communication**" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

**2.46 Margin Securities.** The Company owns no "margin securities" as that term is defined in Regulation U of the Board of Governors of the Federal Reserve System (the "**Federal Reserve Board**"), and none of the proceeds of Offering will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security, for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the shares of Common Stock to be considered a "purpose credit" within the meanings of Regulation T, U or X of the Federal Reserve Board.

**2.47 Forward-Looking Statements.** No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

**2.48 Integration.** 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 the Offering to be integrated with prior offerings by the Company for purposes of the Securities Act that would require the registration of any such securities under the Securities Act.

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**2.49 Confidentiality and Non-Competitions.** To the Company's knowledge, no director, officer, key employee or consultant of the Company is subject to any confidentiality, non-disclosure, non-competition agreement or non-solicitation agreement with any employer or prior employer that could reasonably be expected to materially affect his ability to be and act in his respective capacity of the Company or be expected to result in a Material Adverse Change.

**2.50 Minute Books.** The minute books of the Company have been made available to the Underwriters and counsel for the Underwriters, and such books (i) contain a complete summary of all meetings and actions of the board of directors (including each board committee) and stockholders of the Company (or analogous governing bodies and interest holders, as applicable), and each of its Subsidiaries since the time of its respective incorporation or organization through the date of the latest meeting and action, and (ii) accurately in all material respects reflect all transactions referred to in such minutes. There are no material transactions, agreements, dispositions or other actions of the Company that are not properly approved and/or accurately and fairly recorded in the minute books of the Company, as applicable.

**2.51 Stabilization.** Neither the Company nor, to its knowledge, any of its employees, directors or stockholders (without the consent of the Representative) has taken, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result in, under Regulation M of the Exchange Act, or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Public Securities.

**2.52 U.S. Real Property Holding Corporation.** The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon the Representative's request.

**2.53 XBRL.** The interactive data in eXtensible Business Reporting Language included in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

3. Covenants of the Company. The Company covenants and agrees as follows:

3.1 Amendments to Registration Statement. The Company shall deliver to the Representative, prior to filing, any amendment or supplement to the Registration Statement or Prospectus proposed to be filed after the Effective Date and not file any such amendment or supplement to which the Representative shall reasonably object in writing.

3.2 Federal Securities Laws.

3.2.1. Compliance. The Company, subject to Section 3.2.2, shall comply with the requirements of Rule 430A of the Securities Act Regulations, and will notify the Representative promptly, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed; (ii) of the receipt of any comments from the Commission; (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information; (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, or of the suspension of the qualification of the Public Securities and Representative's Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the Securities Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the Securities Act in connection with the Offering of the Public Securities and Representative's Securities. The Company shall effect all filings required under Rule 424(b) of the Securities Act Regulations, in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b) (8)), and shall take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company shall use its best efforts to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment.

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3.2.2. Continued Compliance. The Company shall comply with the Securities Act, the Securities Act Regulations, the Exchange Act and the Exchange Act Regulations so as to permit the completion of the distribution of the Public Securities as contemplated in this Agreement and in the Registration Statement, the Pricing Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Public Securities is (or, but for the exception afforded by Rule 172 of the Securities Act Regulations ("Rule 172"), would be) required by the Securities Act to be delivered in connection with sales of the Public Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will 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 not misleading; (ii) amend or supplement the Pricing Disclosure Package or the Prospectus in order that the Pricing Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the Pricing Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the Securities Act or the Securities Act Regulations, the Company will promptly (A) give the Representative notice of such event; (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the Pricing Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representative with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representative or counsel for the Underwriters shall reasonably object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company has given the Representative notice of any filings made pursuant to the Exchange Act or the Exchange Act Regulations within 48 hours prior to the Applicable Time. The Company shall give the Representative notice of its intention to make any such filing from the Applicable Time until the later of the Closing Date and the exercise in full or expiration of the Over-allotment Option specified in Section 1.2 hereof and will furnish the Representative with copies of the related document(s) a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representative or counsel for the Underwriters shall reasonably object.

3.2.3. Exchange Act Registration. For a period of three (3) years after the date of this Agreement, the Company shall use its best efforts to maintain the registration of the Series A Preferred Stock, the Warrants and the Common Stock under the Exchange Act. The Company shall not deregister the Series A Preferred Stock, the Warrants or the Common Stock under the Exchange Act without the prior written consent of the Representative.

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3.2.4. Free Writing Prospectuses. The Company agrees that, unless it obtains the prior written consent of the Representative, it shall not make any offer relating to the Public Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus," or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representative shall be deemed to have consented to each Issuer General Use Free Writing Prospectus hereto and any "road show that is a written communication" within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representative. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Underwriters as an "issuer free writing prospectus," as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Underwriters and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

3.2.5. Testing-the-Waters Communications. If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company shall promptly notify the Representative and shall promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.

3.3 Delivery to the Underwriters of Registration Statements. The Company has delivered or made available or shall deliver or make available to the Representative and counsel for the Representative, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith) and signed copies of all consents and certificates of experts, and will also deliver to the Underwriters, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

3.4 Delivery to the Underwriters of Prospectuses. The Company has delivered or made available or will deliver or make available to each Underwriter, without charge, as many copies of each Preliminary Prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the Securities Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Public Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

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3.5 Effectiveness and Events Requiring Notice to the Representative. The Company shall use its best efforts to cause the Registration Statement to remain effective with a current prospectus for at least nine (9) months after the Applicable Time, and shall notify the Representative immediately and confirm the notice in writing: (i) of the effectiveness of the Registration Statement and any amendment thereto; (ii) of the issuance by the Commission of any stop order or of the initiation, or the threatening, of any proceeding for that purpose; (iii) of the issuance by any state securities commission of any proceedings for the suspension of the qualification of the Public Securities for offering or sale in any jurisdiction or of the initiation, or the threatening, of any proceeding for that purpose; (iv) of the mailing and delivery to the Commission for filing of any amendment or supplement to the Registration Statement or Prospectus; (v) of the receipt of any comments or request for any additional information from the Commission; and (vi) of the happening of any event during the period described in this Section 3.5 that, in the judgment of the Company, makes any statement of a material fact made in the Registration Statement, the Pricing Disclosure Package or the Prospectus untrue or that requires the making of any changes in (a) the Registration Statement in order to make the statements therein not misleading, or (b) in the Pricing Disclosure Package or the Prospectus in order to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Commission or any state securities commission shall enter a stop order or suspend such qualification at any time, the Company shall make every reasonable effort to obtain promptly the lifting of such order.

3.6 Review of Financial Statements. For a period of five (5) years after the date of this Agreement, the Company, at its expense, shall cause its regularly engaged independent registered public accounting firm to review (but not audit) the Company's financial statements for each of the three fiscal quarters immediately preceding the announcement of any quarterly financial information.

3.7 Listing. The Company shall use its best efforts to maintain the listing of the Series A Preferred Stock (including the Public Shares), the Warrants (including the Public Warrants) and the Common Stock on the Exchange for at least three years from the date of this Agreement.

3.8 Financial Public Relations Firm. As of the Effective Date, the Company shall have retained a financial public relations firm reasonably acceptable to the Representative and the Company, which shall initially be Hanover International, Inc., which firm shall be experienced in assisting issuers in initial public offerings of securities and in their relations with their security holders, and shall retain such firm or another firm reasonably acceptable to the Representative for a period of not less than two (2) years after the Effective Date.

### 3.9 Reports to the Representative.

3.9.1. Periodic Reports, etc. For a period of three (3) years after the date of this Agreement, the Company shall furnish or make available to the Representative copies of such financial statements and other periodic and special reports as the Company from time to time furnishes generally to holders of any class of its securities and also promptly furnish to the Representative: (i) a copy of each periodic report the Company shall be required to file with the Commission under the Exchange Act and the Exchange Act Regulations; (ii) a copy of every press release and every news item and article with respect to the Company or its affairs which was released by the Company; (iii) a copy of each Form 8-K prepared and filed by the Company; (iv) five copies of each registration statement filed by the Company under the Securities Act; and (v) such additional documents and information with respect to the Company and the affairs of any future subsidiaries of the Company as the Representative may from time to time reasonably request; provided the Representative shall sign, if requested by the Company, a Regulation FD compliant confidentiality agreement which is reasonably acceptable to the Representative and Representative Counsel in connection with the Representative's receipt of such information. Documents filed with the Commission pursuant to its EDGAR system shall be deemed to have been delivered to the Representative pursuant to this Section 3.9.1.

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3.9.2. Transfer Agent; Transfer Sheets. For a period of three (3) years after the date of this Agreement, the Company shall continue to retain a transfer agent and registrar acceptable to the Representative (the "**Transfer Agent**") and shall furnish to the Representative at the Company's sole cost and expense such transfer sheets of the Company's securities as the Representative may reasonably request, including the daily and monthly consolidated transfer sheets of the Transfer Agent and DTC. Mountain Share Transfer, LLC is acceptable to the Representative to act as Transfer Agent for the Series A Preferred Stock (including the Public Shares) and the Warrants (including the Public Warrants), provided that the Company may engage an alternative Transfer Agent during such three (3) year period that is reasonably acceptable to the Representative.

3.9.3. Trading Reports. During such time as the Public Securities are listed on the Exchange, the Company shall provide to the Representative, at the Company's expense, such reports published by the Exchange relating to price trading of the Public Securities, as the Representative shall reasonably request.

### 3.10 Payment of Expenses

3.10.1. General Expenses Related to the Offering. The Company hereby agrees to pay on each of the Closing Date and the Option Closing Date, if any, to the extent not paid at the Closing Date, all expenses incident to the performance of the obligations of the Company under this Agreement, including, but not limited to: (a) all filing fees and communication expenses relating to the registration of the Public Securities and the Representative's Securities to be sold in the Offering (including the Option Securities) with the Commission; (b) all Public Filing System filing fees associated with the review of the Offering by FINRA; (c) all fees and expenses relating to the listing of such Public Securities on the Exchange and such other stock exchanges as the Company and the Representative together determine, including any fees charged by DTC for new securities; (d) all fees, expenses and disbursements relating to background checks of the Company's officers and directors; (e) all fees, expenses and disbursements relating to the registration or qualification of the Public Securities under the "blue sky" securities laws of such states and other jurisdictions as the Representative may reasonably designate (including, without limitation, all filing and registration fees); (f) all fees, expenses and disbursements relating to the registration, qualification or exemption of the Public Securities under the securities laws of such foreign jurisdictions as the Representative may reasonably designate; (g) the costs of all mailing and printing of the underwriting documents (including, without limitation, the Underwriting Agreement, any Blue Sky Surveys and, if appropriate, any Agreement Among Underwriters, Selected Dealers' Agreement, Underwriters' Questionnaire and Power of Attorney), Registration Statements, Prospectuses and all amendments, supplements and exhibits thereto and as many preliminary and final Prospectuses as the Representative may reasonably deem necessary; (h) the costs and expenses of a public relations firm; (i) the costs of preparing, printing and delivering certificates representing the Public Securities; (j) fees and expenses of the transfer agent for the Public Securities; (k) stock transfer and/or stamp taxes, if any, payable upon the transfer of securities from the Company to the Underwriters; (l) the costs associated with post-Closing advertising the Offering in the national editions of the Wall Street Journal and New York Times; (m) the costs associated with one set of bound volumes of the public offering materials as well as commemorative mementos and lucite tombstones, each of which the Company or its designee shall provide within a reasonable time after the Closing Date in such quantities as the Representative may reasonably request; (n) the fees and expenses of the Company's accountants; (o) the fees and expenses of the Company's legal counsel and other agents and representatives; (p) fees and expenses of the Underwriters' legal counsel; (q) the cost associated with the use of Ipreo's book-building, prospectus tracking and compliance software for the Offering; (r) data services and communications expenses; and (s) the Underwriters' actual accountable "road show," market making and trading, and clearing firm settlement expenses for the Offering. Notwithstanding the foregoing, the Company's obligations to reimburse the Underwriters for any out-of-pocket expenses actually incurred as set forth in the preceding sentence shall not exceed \$150,000 in the aggregate, including but not limited to the reasonable legal fees and road show expenses as described therein. The Representative may deduct from the net proceeds of the Offering payable to the Company on the Closing Date, or the Option Closing Date, if any, the expenses set forth herein to be paid by the Company to the Underwriters.

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3.10.2. Non-accountable Expenses. The Company further agrees that, in addition to the expenses payable pursuant to Section 3.10.1, on the Closing Date it shall pay to the Representative, by deduction from the net proceeds of the Offering contemplated herein, a non-accountable expense allowance equal to one percent (1%) of the gross proceeds received by the Company from the sale of the Firm Securities (excluding the Option Securities), provided, however, that in the event that the Offering is terminated, the Company agrees to reimburse the Underwriters pursuant to Section 8.3 hereof.

3.11 Application of Net Proceeds. The Company shall apply the net proceeds from the Offering received by it in a manner consistent with the application thereof described under the caption "Use of Proceeds" in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

3.12 Delivery of Earnings Statements to Security Holders. The Company shall make generally available to its security holders as soon as practicable, but not later than the first day of the fifteenth (15<sup>th</sup>) full calendar month following the date of this Agreement, an earnings statement (which need not be certified by independent registered public accounting firm unless required by the Securities Act or the Securities Act Regulations, but which shall satisfy the provisions of Rule 158(a) under Section 11(a) of the Securities Act) covering a period of at least twelve (12) consecutive months beginning after the date of this Agreement.

3.13 Stabilization. Neither the Company nor, to its knowledge, any of its employees, directors or shareholders (without the consent of the Representative) has taken or shall take, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result in, under Regulation M of the Exchange Act, or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Public Securities.

3.14 Internal Controls. The Company shall maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary in order to permit preparation of financial statements in accordance with GAAP and to maintain accountability for assets; (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 existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.15 Accountants. As of the date of this Agreement, the Company shall retain an independent registered public accounting firm reasonably acceptable to the Representative, and the Company shall continue to retain a nationally recognized independent registered public accounting firm for a period of at least three (3) years after the date of this Agreement. The Representative acknowledges that the Auditor is acceptable to the Representative.

3.16 FINRA. The Company shall advise the Representative (who shall make an appropriate filing with FINRA) if it is or becomes aware that (i) any officer or director of the Company, (ii) any beneficial owner of 5% or more of any class of the Company's securities or (iii) any beneficial owner of the Company's unregistered equity securities which were acquired during the 180 days immediately preceding the filing of the Registration Statement is or becomes an affiliate or associated person of a FINRA member participating in the Offering (as determined in accordance with the rules and regulations of FINRA).

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3.17 No Fiduciary Duties. The Company acknowledges and agrees that the Underwriters' responsibility to the Company is solely contractual in nature and that none of the Underwriters or their affiliates or any selling agent shall be deemed to be acting in a fiduciary capacity, or otherwise owes any fiduciary duty to the Company or any of its affiliates in connection with the Offering and the other transactions contemplated by this Agreement.

3.18 Company Lock-Up Agreements.

3.18.1. Restriction on Sales of Capital Stock. The Company, on behalf of itself and any successor entity, agrees that, without the prior written consent of the Representative, it will not, for a period of 90 days after the date of this Agreement (the "**Lock-Up Period**"), (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for shares of capital stock of the Company; (ii) file or cause to be filed any registration statement with the Commission relating to the offering of any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for shares of capital stock of the Company; (iii) complete any offering of debt securities of the Company, other than entering into a line of credit with a traditional bank or (iv) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of capital stock of the Company, whether any such transaction described in clause (i), (ii), (iii) or (iv) above is to be settled by delivery of shares of capital stock of the Company or such other securities, in cash or otherwise.

The restrictions contained in this Section 3.18.1 shall not apply to (i) the issuance by the Company of the Public Securities and the Representative's Securities to be sold hereunder, or the issuance by the Company of shares of Common Stock, shares of Series A Preferred Stock or warrants upon the exercise or the conversion of any of the Public Securities or Representative's Securities to be sold hereunder, (ii) the issuance by the Company of shares of Common Stock upon the exercise of a stock option or warrant or the conversion of a security outstanding on the date hereof, which is disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, provided that such options, warrants, and 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 or to extend the term of such securities, or (iii) the issuance by the Company of stock options or shares of capital stock of the Company under any equity compensation plan of the Company, provided that in each of (ii) and (iii) above, the underlying shares shall be restricted from sale during the entire Lock-Up Period.

3.18.2. Restriction on Continuous Offerings. Notwithstanding the restrictions contained in Section 3.18.1, the Company, on behalf of itself and any successor entity, agrees that, without the prior written consent of the Representative, it will not, for a period of 12 months after the date of this Agreement, directly or indirectly in any "at-the-market" or continuous equity transaction, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for shares of capital stock of the Company.

3.19 Release of D&O Lock-up Period. If the Representative, in its sole discretion, agrees to release or waive the restrictions set forth in the Lock-Up Agreements described in Section 2.24 hereof for an officer or director of the Company and provide the Company with notice of the impending release or waiver at least three (3) Business Days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit C hereto through a major news service at least two (2) Business Days before the effective date of the release or waiver.

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3.20 Blue Sky Qualifications. The Company shall use its best efforts, in cooperation with the Underwriters, if necessary, to qualify the Public Securities, including the underlying shares of Common Stock, for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representative may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Public Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

3.21 Reporting Requirements. The Company, during the period when a prospectus relating to the Public Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by the Exchange Act and Exchange Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Public Securities as may be required under Rule 463 under the Securities Act Regulations.

3.22 Emerging Growth Company Status. The Company shall promptly notify the Representative if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of the Public Securities within the meaning of the Securities Act and (ii) fifteen (15) days following the completion of the Lock-Up Period.

3.23 Press Releases. Prior to the Closing Date and any Option Closing Date, the Company shall not issue any press release or other communication directly or indirectly or

hold any press conference with respect to the Company, its condition, financial or otherwise, or earnings, business affairs or business prospects (except for routine oral marketing communications in the ordinary course of business and consistent with the past practices of the Company and of which the Representative is notified), without the prior written consent of the Representative, which consent shall not be unreasonably withheld, unless in the judgment of the Company and its counsel, and after notification to the Representative, such press release or communication is required by law.

3.24 Sarbanes-Oxley. The Company shall at all times comply with all applicable provisions of the Sarbanes-Oxley Act in effect from time to time.

3.25 IRS Forms. The Company shall deliver to each Underwriter (or its agent), prior to or at the Closing Date, a properly completed and executed Internal Revenue Service (“IRS”) Form W-9 or an IRS Form W-8, as appropriate, together with all required attachments to such form.

3.26 Pursuant to the Exchange Act. Prior to the date of this Agreement, the Company shall have filed with the Commission the Form 8-A providing for the registration pursuant to Section 12(b) under the Exchange Act of (i) the Series A Preferred Stock, including the Public Shares and the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and (ii) the Warrants, including the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants; and prior to the Applicable Time such Form 8-A shall have become effective under the Exchange Act. The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the the Series A Preferred Stock, including the Public Shares and the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and the Warrants, including the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants, under the Exchange Act, nor has the Company received any notification that the Commission is contemplating terminating such registration.

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3.27 Certificate of Designations. The Certificate of Designations will be, prior to the Closing Time, duly authorized, executed and filed by the Company with the Secretary of State of the State of Washington.

4. Conditions of Underwriters’ Obligations. The obligations of the Underwriters to purchase and pay for the Public Securities, as provided herein, shall be subject to (i) the continuing accuracy of the representations and warranties of the Company as of the date hereof and as of each of the Closing Date and the Option Closing Date, if any; (ii) the accuracy of the statements of officers of the Company made pursuant to the provisions hereof; (iii) the performance by the Company of its obligations hereunder; and (iv) the following conditions:

#### 4.1 Regulatory Matters.

4.1.1. Effectiveness of Registration Statement; Rule 430A Information. The Registration Statement (including any registration statement filed under Rule 462(b) of the Securities Act in connection with this offering) has become effective not later than 9:00 a.m., Eastern time, on the date of this Agreement, and, at each of the Closing Date and any Option Closing Date, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the Securities Act, no order preventing or suspending the use of any Preliminary Prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, contemplated by the Commission. The Company has complied with each request (if any) from the Commission for additional information. The Prospectus containing the Rule 430A Information shall have been filed with the Commission in the manner and within the time frame required by Rule 424(b) (without reliance on Rule 424(b)(8)) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430A.

4.1.2. FINRA Clearance. On or before the date of this Agreement, the Representative shall have received clearance from FINRA as to the amount of compensation allowable or payable to the Underwriters as described in the Registration Statement.

4.1.3. Exchange Stock Market Clearance. On or prior to the date of this Agreement, (i) the Series A Preferred Stock, including the Public Shares and the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, (ii) the Warrants, including the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants, (iii) the Preferred Conversion Shares issuable upon conversion of the Public Shares and upon conversion of the shares of Series A Preferred Stock issuable upon exercise of the Representative’s Warrants for Series A Preferred Stock, and (iv) the shares of Common Stock issuable upon exercise of the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative’s Warrants for Common Stock Warrants, each shall have been approved for listing on the Exchange, subject only to official notice of issuance.

#### 4.2 Company Counsel Matters.

4.2.1. Closing Date Opinion of Counsel. On the Closing Date, the Representative shall have received the favorable opinions and “10b-5” negative assurances of Fitzgerald Yap Kreditor, LLP (“**Issuer Counsel**”), counsel to the Company, dated the Closing Date and addressed to the Representative, in form and substance reasonably satisfactory to the Representative.

4.2.2. Option Closing Date Opinions of Counsel. On the Option Closing Date, if any, the Representative shall have received the favorable opinions and “10b-5” negative assurances of Issuer’s Counsel, dated the Option Closing Date, addressed to the Representative and in form and substance reasonably satisfactory to the Representative, confirming as of the Option Closing Date, the statements made by such counsels in their respective opinions delivered on the Closing Date.

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4.2.3. Reliance. In rendering such opinions, such counsel may rely: (i) as to matters involving the application of laws other than the laws of the United States and jurisdictions in which they are admitted, to the extent such counsel deems proper and to the extent specified in such opinion, if at all, upon an opinion or opinions (in form and substance reasonably satisfactory to the Representative) of other counsel reasonably acceptable to the Representative, familiar with the applicable laws; and (ii) as to matters of fact, to the extent they deem proper, on certificates or other written statements of officers of the Company and officers of departments of various jurisdictions having custody of documents respecting the corporate existence or good standing of the Company, provided that copies of any such statements or certificates shall be delivered to Representative Counsel if requested. The opinion of Issuer Counsel and any opinion relied upon by Issuer Counsel shall include a statement to the effect that it may be relied upon by Representative Counsel in its opinion delivered to the Underwriters.

#### 4.3 Comfort Letters.

4.3.1. Cold Comfort Letter. At the time this Agreement is executed the Representative shall have received a cold comfort letter containing statements and information of the type customarily included in accountants’ comfort letters with respect to the financial statements and certain financial information contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus, addressed to the Representative and in form and substance satisfactory in all respects to the Representative and to the Auditor, dated as of the date of this Agreement.

4.3.2. Bring-down Comfort Letter. At each of the Closing Date and the Option Closing Date, if any, the Representative shall have received from the Auditor a letter, dated as of the Closing Date or the Option Closing Date, as applicable, to the effect that the Auditor reaffirms the statements made in the letter furnished pursuant to Section 4.3.1, except that the specified date referred to shall be a date not more than three (3) business days prior to the Closing Date or the Option Closing Date, as applicable.



#### 4.4 Officers' Certificates.

4.4.1. Officers' Certificate. The Company shall have furnished to the Representative a certificate, dated the Closing Date and any Option Closing Date (if such date is other than the Closing Date), of its Chief Executive Officer, its President and its Chief Financial Officer stating that (i) such officers have carefully examined the Registration Statement, the Pricing Disclosure Package, any Issuer Free Writing Prospectus and the Prospectus and, in their opinion, the Registration Statement and each amendment thereto, as of the Applicable Time and as of the Closing Date (or any Option Closing Date if such date is other than the Closing Date) did not include any untrue statement of a material fact and did not omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Pricing Disclosure Package, as of the Applicable Time and as of the Closing Date (or any Option Closing Date if such date is other than the Closing Date), any Issuer Free Writing Prospectus as of its date and as of the Closing Date (or any Option Closing Date if such date is other than the Closing Date), the Prospectus and each amendment or supplement thereto, as of the respective date thereof and as of the Closing Date, did not include any untrue statement of a material fact and did not omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances in which they were made, not misleading, (ii) since the effective date of the Registration Statement, no event has occurred which should have been set forth in a supplement or amendment to the Registration Statement, the Pricing Disclosure Package or the Prospectus, (iii) to the best of their knowledge after reasonable investigation, as of the Closing Date (or any Option Closing Date if such date is other than the Closing Date), the representations and warranties of the Company in this Agreement are true and correct and the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date (or any Option Closing Date if such date is other than the Closing Date), and (iv) there has not been, subsequent to the date of the most recent audited financial statements included or incorporated by reference in the Pricing Disclosure Package, any material adverse change in the financial position or results of operations of the Company, or any change or development that, singularly or in the aggregate, would involve a material adverse change or a prospective material adverse change, in or affecting the condition (financial or otherwise), results of operations, business, assets or prospects of the Company, except as set forth in the Prospectus.

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4.4.2. Secretary's Certificate. At each of the Closing Date and the Option Closing Date, if any, the Representative shall have received a certificate of the Company signed by the Secretary of the Company, dated the Closing Date or the Option Closing Date, as the case may be, respectively, certifying: (i) that each of the Charter and Bylaws is true and complete, has not been modified and is in full force and effect; (ii) that the resolutions of the Company's Board of Directors relating to the Offering are in full force and effect and have not been modified; (iii) as to the accuracy and completeness of all correspondence between the Company or its counsel and the Commission; and (iv) as to the incumbency of the officers of the Company. The documents referred to in such certificate shall be attached to such certificate.

4.5 No Material Changes. Prior to and on each of the Closing Date and each Option Closing Date, if any: (i) there shall have been no material adverse change or development involving a prospective material adverse change in the condition or prospects or the business activities, financial or otherwise, of the Company from the latest dates as of which such condition is set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus; (ii) no action, suit or proceeding, at law or in equity, shall have been pending or threatened against the Company or any Insider before or by any court or federal or state commission, board or other administrative agency wherein an unfavorable decision, ruling or finding may materially adversely affect the business, operations, prospects or financial condition or income of the Company, except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus; (iii) no stop order shall have been issued under the Securities Act and no proceedings therefor shall have been initiated or threatened by the Commission; and (iv) no action shall have been taken and no law, statute, rule, regulation or order shall have been enacted, adopted or issued by any Governmental Entity which would prevent the issuance or sale of the Public Securities or materially and adversely affect or potentially materially and adversely affect the business or operations of the Company; (v) no injunction, restraining order or order of any other nature by any federal or state court of competent jurisdiction shall have been issued which would prevent the issuance or sale of the Public Securities or materially and adversely affect or potentially materially and adversely affect the business or operations of the Company and (vi) the Registration Statement, the Pricing Disclosure Package and the Prospectus and any amendments or supplements thereto shall contain all material statements which are required to be stated therein in accordance with the Securities Act and the Securities Act Regulations and shall conform in all material respects to the requirements of the Securities Act and the Securities Act Regulations, and neither the Registration Statement, the Pricing Disclosure Package nor the Prospectus nor any amendment or supplement thereto shall 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 light of the circumstances under which they were made, not misleading.

4.6 No Material Misstatement or Omission. The Underwriters shall not have discovered and disclosed to the Company on or prior to the Closing Date and any Option Closing Date that the Registration Statement or any amendment or supplement thereto contains an untrue statement of a fact which, in the opinion of counsel for the Underwriters, is material or omits to state any fact which, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading, or that the Registration Statement, the Pricing Disclosure Package, any Issuer Free Writing Prospectus or the Prospectus or any amendment or supplement thereto contains an untrue statement of fact which, in the opinion of such counsel, is material or omits to state any fact which, in the opinion of such counsel, is material and is necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

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4.7 Corporate Proceedings. All corporate proceedings and other legal matters incident to the authorization, form and validity of each of this Agreement, the Representative's Warrant Agreements, the Warrant Agency Agreement, the Registration Statement, the Pricing Disclosure Package, each Issuer Free Writing Prospectus, if any, and the Prospectus and all other legal matters relating to this Agreement, the Representative's Warrant Agreements, the Warrant Agency Agreement and the transactions contemplated hereby and thereby shall be reasonably satisfactory in all material respects to counsel for the Underwriters, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

#### 4.8 Delivery of Agreements.

4.8.1. Lock-Up Agreements. On or before the date of this Agreement, the Company shall have delivered to the Representative executed copies of the Lock-Up Agreements from each of the persons listed in Schedule 3 hereto.

4.8.2. Representative's Warrant Agreements. On the Closing Date, the Company shall have delivered to the Representative executed copies of each of the Representative's Warrant Agreements.

4.8.3. Warrant Agency Agreement. On the Closing Date, the Company shall have delivered to the Representative an executed copy of the Warrant Agency Agreement, executed by the Company and the Warrant Agent.

4.9 Filing of Form 8-A. Prior to the Applicable Time, (i) the Company shall have filed with the Commission the Form 8-A providing for the registration pursuant to Section 12(b) under the Exchange Act of the Series A Preferred Stock, including the Public Shares and the shares of Series A Preferred Stock issuable upon exercise of the Representative's Warrants for Series A Preferred Stock, and the Warrants, including the Public Warrants and the Underlying Common Stock Warrants issuable upon exercise of the Representative's Warrants for Common Stock Warrants, and (ii) such Form 8-A shall have become effective under the Exchange Act.

4.10 Certificate of Designations. On or prior to the date of this Agreement, the Certificate of Designations shall be duly authorized, executed and filed by the Company with the Secretary of State of the State of Washington. On the Closing Date, the Company shall have delivered to the Representative a certified copy of Articles of Incorporation containing the Certificate of Designations filed by the Company with the Secretary of State of the State of Washington, as certified by the Secretary of State of the State of Washington within three (3) Business Days of the Closing Date.

4.9 Additional Documents. At the Closing Date and at each Option Closing Date (if any) Representative Counsel shall have been furnished with such documents and opinions as they may require for the purpose of enabling Representative's Counsel to deliver an opinion to the Underwriters, or in order to evidence the accuracy of any of the

## 5. Indemnification.

### 5.1 Indemnification of the Underwriters.

5.1.1. General. Subject to the conditions set forth below, the Company agrees to indemnify and hold harmless each Underwriter, its affiliates and each of its and their respective directors, officers, members, employees, representatives, partners, shareholders, affiliates, counsel, and agents and each person, if any, who controls any such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively the "**Underwriter Indemnified Parties**," and each an "**Underwriter Indemnified Party**"), against any and all loss, liability, claim, damage and expense whatsoever (including but not limited to any and all legal or other expenses reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, whether arising out of any action between any of the Underwriter Indemnified Parties and the Company or between any of the Underwriter Indemnified Parties and any third party, or otherwise) to which they or any of them may become subject under the Securities Act, the Exchange Act or any other statute or at common law or otherwise or under the laws of foreign countries (a "**Claim**"), (i) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in (A) the Registration Statement, the Pricing Disclosure Package, any Preliminary Prospectus, the Prospectus, or in any Issuer Free Writing Prospectus or in any Written Testing-the-Waters Communication (as from time to time each may be amended and supplemented); (B) any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the Offering, including any "road show" or investor presentations made to investors by the Company (whether in person or electronically); or (C) any application or other document or written communication (in this Section 5, collectively called "application") executed by the Company or based upon written information furnished by the Company in any jurisdiction in order to qualify the Public Securities and Representative's Securities under the securities laws thereof or filed with the Commission, any state securities commission or agency, the Exchange or any other national securities exchange; or the omission or alleged omission therefrom of a 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, unless such statement or omission was made in reliance upon, and in conformity with, the Underwriters' Information or (ii) otherwise arising in connection with or allegedly in connection with the Offering. The Company also agrees that it will reimburse each Underwriter Indemnified Party for all fees and expenses (including but not limited to any and all legal or other expenses reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, whether arising out of any action between any of the Underwriter Indemnified Parties and the Company or between any of the Underwriter Indemnified Parties and any third party, or otherwise) (collectively, the "**Expenses**"), and further agrees wherever and whenever possible to advance payment of Expenses as they are incurred by an Underwriter Indemnified Party in investigating, preparing, pursuing or defending any Claim.

5.1.2. Procedure. If any action is brought against an Underwriter Indemnified Party in respect of which indemnity may be sought against the Company pursuant to Section 5.1.1, such Underwriter Indemnified Party shall promptly notify the Company in writing of the institution of such action and the Company shall assume the defense of such action, including the employment and fees of counsel (subject to the approval of such Underwriter Indemnified Party) and payment of actual expenses if an Underwriter Indemnified Party requests that the Company do so. Such Underwriter Indemnified Party shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company, and shall be advanced by the Company. The Company shall not be liable for any settlement of any action effected without its consent (which shall not be unreasonably withheld). In addition, the Company shall not, without the prior written consent of the Underwriters, settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened action in respect of which advancement, reimbursement, indemnification or contribution may be sought hereunder (whether or not such Underwriter Indemnified Party is a party thereto) unless such settlement, compromise, consent or termination (i) includes an unconditional release of each Underwriter Indemnified Party, acceptable to such Underwriter Indemnified Party, from all liabilities, expenses and claims arising out of such action for which indemnification or contribution may be sought and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any Underwriter Indemnified Party.

5.2 Indemnification of the Company. Each Underwriter, severally and not jointly, agrees to indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement and persons who control the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the foregoing indemnity from the Company to the Underwriters, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions made in the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package or Prospectus or any amendment or supplement thereto or in any application, in reliance upon, and in strict conformity with, the Underwriters' Information. In case any action shall be brought against the Company or any other person so indemnified based on any Preliminary Prospectus, the Registration Statement, the Pricing Disclosure Package or Prospectus or any amendment or supplement thereto or any application, and in respect of which indemnity may be sought against any Underwriter, such Underwriter shall have the rights and duties given to the Company, and the Company and each other person so indemnified shall have the rights and duties given to the Underwriters by the provisions of Section 5.1.2. The Company agrees promptly to notify the Representative of the commencement of any litigation or proceedings against the Company or any of its officers, directors or any person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, in connection with the issuance and sale of the Public Securities or in connection with the Registration Statement, the Pricing Disclosure Package, the Prospectus, or any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication.

### 5.3 Contribution.

5.3.1. Contribution Rights. If the indemnification provided for in this Section 5 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 5.1 or 5.2 in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other, from the Offering of the Public Securities, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other, with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other, with respect to such Offering shall be deemed to be in the same proportion as the total net proceeds from the Offering of the Public Securities purchased under this Agreement (before deducting expenses) received by the Company, as set forth in the table on the cover page of the Prospectus, on the one hand, and the total underwriting discounts and commissions received by the Underwriters with respect to the securities purchased under this Agreement, as set forth in the table on the cover page of the Prospectus, on the other hand. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 5.3.1 were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 5.3.1 shall be deemed to include, for purposes of this Section 5.3.1, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 5.3.1 in no event shall an Underwriter be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the Offering of the Public Securities exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

5.3.2. Contribution Procedure. Within fifteen (15) days after receipt by any party to this Agreement (or its representative) of notice of the commencement of any action, suit or proceeding, such party will, if a claim for contribution in respect thereof is to be made against another party (“**contributing party**”), notify the contributing party of the commencement thereof, but the failure to so notify the contributing party will not relieve it from any liability which it may have to any other party other than for contribution hereunder. In case any such action, suit or proceeding is brought against any party, and such party notifies a contributing party or its representative of the commencement thereof within the aforesaid 15 days, the contributing party will be entitled to participate therein with the notifying party and any other contributing party similarly notified. Any such contributing party shall not be liable to any party seeking contribution on account of any settlement of any claim, action or proceeding affected by such party seeking contribution on account of any settlement of any claim, action or proceeding affected by such party seeking contribution without the written consent of such contributing party. The contribution provisions contained in this Section 5.3.2 are intended to supersede, to the extent permitted by law, any right to contribution under the Securities Act, the Exchange Act or otherwise available. Each Underwriter’s obligations to contribute pursuant to this Section 5.3 are several and not joint.

#### 6. Default by an Underwriter.

6.1 Default Not Exceeding 10% of Firm Securities or Option Securities. If any Underwriter or Underwriters shall default in its or their obligations to purchase the Firm Securities or the Option Securities, if the Over-allotment Option is exercised hereunder, and if the number of the Firm Securities or Option Securities with respect to which such default relates does not exceed in the aggregate 10% of the number of Firm Securities or Option Securities that all Underwriters have agreed to purchase hereunder, then such Firm Securities or Option Securities to which the default relates shall be purchased by the non-defaulting Underwriters in proportion to their respective commitments hereunder.

6.2 Default Exceeding 10% of Firm Securities or Option Securities. In the event that the default addressed in Section 6.1 relates to more than 10% of the Firm Securities or Option Securities, you may in your discretion arrange for yourself or for another party or parties to purchase such Firm Securities or Option Securities to which such default relates on the terms contained herein. If, within one (1) Business Day after such default relating to more than 10% of the Firm Securities or Option Securities, you do not arrange for the purchase of such Firm Securities or Option Securities, then the Company shall be entitled to a further period of one (1) Business Day within which to procure another party or parties satisfactory to you to purchase said Firm Securities or Option Securities on such terms. In the event that neither you nor the Company arrange for the purchase of the Firm Securities or Option Securities to which a default relates as provided in this Section 6, this Agreement will automatically be terminated by you or the Company without liability on the part of the Company (except as provided in Sections 3.9 and 5 hereof) or the Underwriters (except as provided in Section 5 hereof); provided, however, that if such default occurs with respect to the Option Securities, this Agreement will not terminate as to the Firm Securities; and provided, further, that nothing herein shall relieve a defaulting Underwriter of its liability, if any, to the other Underwriters and to the Company for damages occasioned by its default hereunder.

6.3 Postponement of Closing Date. In the event that the Firm Securities or Option Securities to which the default relates are to be purchased by the non-defaulting Underwriters, or are to be purchased by another party or parties as aforesaid, the Representative or the Company shall have the right to postpone the Closing Date or Option Closing Date for a reasonable period, but not in any event exceeding five (5) Business Days, in order to effect whatever changes may thereby be made necessary in the Registration Statement, the Pricing Disclosure Package or the Prospectus or in any other documents and arrangements, and the Company agrees to file promptly any amendment to the Registration Statement, the Pricing Disclosure Package or the Prospectus that in the opinion of Representative’s Counsel may thereby be made necessary. The term “**Underwriter**” as used in this Agreement shall include any party substituted under this Section 6 with like effect as if it had originally been a party to this Agreement with respect to such Firm Securities or Option Securities.

#### 7. Additional Covenants.

7.1 Board Composition and Board Designations. The Company shall ensure that: (i) the qualifications of the persons serving as members of the Board of Directors and the overall composition of the Board comply with the Sarbanes-Oxley Act, with the Exchange Act and with the listing rules of the Exchange or any other national securities exchange, as the case may be, in the event the Company seeks to have its securities listed on another exchange or quoted on an automated quotation system, and (ii) if applicable, at least one member of the Audit Committee of the Board of Directors qualifies as an “audit committee financial expert,” as such term is defined under Regulation S-K and the listing rules of the Exchange.

7.2 Prohibition on Press Releases and Public Announcements. The Company shall not issue press releases or engage in any other publicity, without the Representative’s prior written consent, for a period ending at 5:00 p.m., Eastern time, on the first (1<sup>st</sup>) Business Day following the fortieth (40<sup>th</sup>) day after the Closing Date, other than normal and customary releases issued in the ordinary course of the Company’s business.

#### 8. Effective Date of this Agreement and Termination Thereof.

8.1 Effective Date. This Agreement shall become effective when both the Company and the Representative have executed the same and delivered counterparts of such signatures to the other party.

8.2 Termination. The Representative shall have the right to terminate this Agreement at any time prior to any Closing Date, (i) if any domestic or international event or act or occurrence has materially disrupted, or in your opinion will in the immediate future materially disrupt, general securities markets in the United States; or (ii) if trading on the New York Stock Exchange or the Nasdaq Stock Market LLC shall have been suspended or materially limited, or minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required by FINRA or by order of the Commission or any other government authority having jurisdiction; or (iii) if the United States shall have become involved in a new war or an increase in major hostilities; or (iv) if a banking moratorium has been declared by a New York State or federal authority; or (v) if a moratorium on foreign exchange trading has been declared which materially adversely impacts the United States securities markets; or (vi) if the Company shall have sustained a material loss by fire, flood, accident, hurricane, earthquake, theft, sabotage or other calamity or malicious act which, whether or not such loss shall have been insured, will, in your opinion, make it inadvisable to proceed with the delivery of the Firm Securities or Option Securities; or (vii) if the Company is in material breach of any of its representations, warranties or covenants hereunder; or (viii) if the Representative shall have become aware after the date hereof of such a material adverse change in the conditions or prospects of the Company, or such adverse material change in general market conditions as in the Representative’s judgment would make it impracticable to proceed with the offering, sale and/or delivery of the Public Securities or to enforce contracts made by the Underwriters for the sale of the Public Securities.

8.3 Expenses. Notwithstanding anything to the contrary in this Agreement, except in the case of a default by the Underwriters, pursuant to Section 6.2 above, in the event that this Agreement shall not be carried out for any reason whatsoever, within the time specified herein or any extensions thereof pursuant to the terms herein, the Company shall be obligated to pay to the Underwriters their actual and accountable out-of-pocket expenses related to the transactions contemplated herein then due and payable (including the fees and disbursements of Representative’s Counsel) up to \$150,000 and upon demand the Company shall pay the full amount thereof to the Representative on behalf of the Underwriters; provided, however, that such expense cap in no way limits or impairs the indemnification and contribution provisions of this Agreement. Notwithstanding the foregoing, any advance received by the Representative will be reimbursed to the Company to the extent not actually incurred in compliance with FINRA Rule 5110(g)(4)(A).

8.4 Survival of Indemnification. Notwithstanding any contrary provision contained in this Agreement, any election hereunder or any termination of this Agreement, and

whether or not this Agreement is otherwise carried out, the provisions of Section 5 shall remain in full force and effect and shall not be in any way affected by, such election or termination or failure to carry out the terms of this Agreement or any part hereof.

8.5 Representations, Warranties, Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company or (ii) delivery of and payment for the Public Securities.

## 9. Miscellaneous.

9.1 Notices. All communications hereunder, except as herein otherwise specifically provided, shall be in writing and shall be mailed (registered or certified mail, return receipt requested), personally delivered or sent by facsimile transmission and confirmed and shall be deemed given when so delivered or faxed and confirmed or if mailed, two (2) days after such mailing.

If to the Representative:

ThinkEquity  
A division of Fordham Financial Management, Inc.  
17 State Street, 22<sup>nd</sup> Floor  
New York, NY 10004  
Attn: Mr. Eric Lord, Head of Investment Banking  
Fax No.: (212) 349-2550

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

Dorsey & Whitney LLP

51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Attn: Anthony J. Marsico, Esq.  
Fax No.: (212) 953-7201

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If to the Company:

Harbor Custom Development, Inc.  
11505 Burnham Dr., Suite 301  
Gig Harbor, Washington 98332  
Attention: Sterling Griffin, President  
Email: sgriffin@harborcustomdev.com

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

Fitzgerald Yap Kreditor, LLP  
2 Park Plaza, Suite 850  
Irvine, CA 92614  
Attention: Lynne Bolduc, Esq.  
Fax No: (949) 788-8900

9.2 Headings. The headings contained herein are for the sole purpose of convenience of reference, and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

9.3 Amendment. This Agreement may only be amended by a written instrument executed by each of the parties hereto.

9.4 Entire Agreement. This Agreement (together with the other agreements and documents being delivered pursuant to or in connection with this Agreement) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and thereof, and supersedes all prior agreements and understandings of the parties, oral and written, with respect to the subject matter hereof. Notwithstanding anything to the contrary set forth herein, it is understood and agreed by the parties hereto that all other terms and conditions of that certain engagement letter between the Company and ThinkEquity, a division of Fordham Financial Management, Inc. dated February 24, 2021, shall remain in full force and effect.

9.5 Binding Effect. This Agreement shall inure solely to the benefit of and shall be binding upon the Representative, the Underwriters, the Company and the controlling persons, directors and officers referred to in Section 5 hereof, and their respective successors, legal representatives, heirs and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provisions herein contained. The term "successors and assigns" shall not include a purchaser, in its capacity as such, of securities from any of the Underwriters.

9.6 Governing Law; Consent to Jurisdiction; Trial by Jury. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to conflict of laws principles thereof. The Company hereby agrees that any action, proceeding or claim arising out of, or relating in any way to this Agreement shall be brought and enforced in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum. Any such process or summons to be served upon the Company may be served by transmitting a copy thereof by registered or certified mail, return receipt requested, postage prepaid, addressed to it at the address set forth in Section 9.1 hereof. Such mailing shall be deemed personal service and shall be legal and binding upon the Company in any action, proceeding or claim. The Company agrees that the prevailing party(ies) in any such action shall be entitled to recover from the other party(ies) all of its reasonable attorneys' fees and expenses relating to such action or proceeding and/or incurred in connection with the preparation therefor. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters 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 Agreement or the transactions contemplated hereby.

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9.7 Execution in Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts has been

signed by each of the parties hereto and delivered to each of the other parties hereto. Delivery of a signed counterpart of this Agreement by facsimile or email/pdf transmission shall constitute valid and sufficient delivery thereof.

9.8 Waiver, etc. The failure of any of the parties hereto to at any time enforce any of the provisions of this Agreement shall not be deemed or construed to be a waiver of any such provision, nor to in any way effect the validity of this Agreement or any provision hereof or the right of any of the parties hereto to thereafter enforce each and every provision of this Agreement. No waiver of any breach, non-compliance or non-fulfillment of any of the provisions of this Agreement shall be effective unless set forth in a written instrument executed by the party or parties against whom or which enforcement of such waiver is sought; and no waiver of any such breach, non-compliance or non-fulfillment shall be construed or deemed to be a waiver of any other or subsequent breach, non-compliance or non-fulfillment.

9.9 Research Analyst Independence. The Company acknowledges that each Underwriter's research analysts and research departments, if any, are required to be independent from its investment banking division and are subject to certain regulations and internal policies, and that such Underwriter's research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the Offering that differ from the views of their investment banking division. The Company acknowledges that each Underwriter is a full service securities firm and as such from time to time, subject to applicable securities laws, rules and regulations, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the Company; provided, however, that nothing in this Section 9.9 shall relieve the Underwriter of any responsibility or liability it may otherwise bear in connection with activities in violation of applicable securities laws, rules or regulations.

[Signature Page Follows]

If the foregoing correctly sets forth the understanding between the Underwriters and the Company, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between us.

Very truly yours,

HARBOR CUSTOM DEVELOPMENT, INC.

By: /s/ Sterling Griffin

Name: Sterling Griffin

Title: Chief Executive Officer, President, and Chairman of the Board of Directors

Confirmed as of the date first written above mentioned, on behalf of itself and as Representative of the several Underwriters named on Schedule 1 hereto:

ThinkEquity  
A division of Fordham Financial Management, Inc.

By: /s/ Priyanka Mahajan

Name: Priyanka Mahajan

Title: Managing Director, Investment Banking

[signature page]

harbor custom development, inc. - underwriting agreement

**SCHEDULE 1**

<b>Underwriter</b>	<b>Total Number of Firm Shares to be Purchased</b>	<b>Total Number of Firm Warrants to be Purchased</b>	<b>Number of Option Shares to be Purchased if the Over-Allotment Option is Fully Exercised</b>	<b>Number of Option Warrants to be Purchased if the Over-Allotment Option is Fully Exercised</b>
ThinkEquity, a division of Fordham Financial Management, Inc.	1,200,000	3,600,000	180,000	540,000
<b>TOTAL</b>	<b>1,200,000</b>	<b>3,600,000</b>	<b>180,000</b>	<b>540,000</b>

Sch. 1 -1

**SCHEDULE 2-A**

**Pricing Information**

Number of Firm Shares: 1,200,000

Number of Firm Warrants: 3,600,000

Number of Option Shares: 180,000

Number of Option Warrants: 540,000

Public Offering Price per one Firm Share and three Firm Warrants: \$25.00

Underwriting Discount per one Share and three Warrants: \$1.75 (\$1.7479 per Share and \$0.0007 per Warrant)

Proceeds to Company per one Share and three Warrants (before expenses): \$23.25

**SCHEDULE 2-B**

**Issuer General Use Free Writing Prospectuses**

**SCHEDULE 2-C**

**Written Testing-the-Waters Communications**

None.

Sch. 2 -1

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**SCHEDULE 3**

**List of Lock-Up Parties**

Sterling Griffin  
Lynda Meadows  
Richard Schmidtke  
Anita Fritz  
Jeffrey Habersetzer  
Robb Kenyon  
Larry Swets  
Wally Walker  
Dennis Wong  
The Griffin Investment Trust  
Karen Bryant

Sch. 3 -1

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**EXHIBIT A-1**

**Form of Underwriter's Warrant Agreement (8.0% Cumulative Convertible Series A Preferred Stock)**

THE REGISTERED HOLDER OF THIS UNDERWRITER'S WARRANT BY ITS ACCEPTANCE HEREOF, AGREES THAT THIS UNDERWRITER'S WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR HYPOTHECATED, OR BE THE SUBJECT OF ANY HEDGING, SHORT SALE, DERIVATIVE, PUT, OR CALL TRANSACTION THAT WOULD RESULT IN THE EFFECTIVE ECONOMIC DISPOSITION OF SUCH SECURITIES BY ANY PERSON FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS IMMEDIATELY FOLLOWING THE DATE OF EFFECTIVENESS OF THE PUBLIC OFFERING OF THE COMPANY'S SECURITIES PURSUANT TO REGISTRATION STATEMENT NO. 333-255229 AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION, EXCEPT IN ACCORDANCE WITH FINRA RULE 5110(e)(2).

THIS UNDERWRITER'S WARRANT IS NOT EXERCISABLE PRIOR TO December 6, 2021. VOID AFTER 5:00 P.M., EASTERN TIME, June 9, 2026.

**UNDERWRITER'S WARRANT TO PURCHASE 8.0% SERIES A CUMULATIVE CONVERTIBLE PREFERRED STOCK**

**HARBOR CUSTOM DEVELOPMENT, INC.**

Warrant Shares: 12,000

Initial Exercise Date: December 6, 2021

THIS UNDERWRITER'S WARRANT TO PURCHASE 8.0% SERIES A CUMULATIVE CONVERTIBLE PREFERRED STOCK (the "Underwriter's Warrant") certifies that, for value received, ThinkEquity, a division of Fordham Financial Management, Inc., or its assigns (the "Holder"), is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after December 6, 2021 (the "Initial Exercise Date") and, in accordance with FINRA Rule 5110(g)(8) (A), prior to at 5:00 p.m. (New York time) on the date that is five (5) years following the Effective Date (the "Termination Date") but not thereafter, to subscribe for and purchase from Harbor Custom Development, Inc., a Washington corporation (the "Company"), up to 12,000 shares of 8.0% Series A Cumulative Convertible Preferred Stock, no par value per share, of the Company (the "Warrant Shares"), as subject to adjustment hereunder. The purchase price of one share of 8.0% Series A Cumulative Convertible Preferred Stock under this Underwriter's Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Ex A-1

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**Section 1. Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated in this Section 1:

"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.

“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 that banks shall not be deemed to be authorized or obligated to be closed due to a “shelter in place,” “non-essential employee” or similar closure of physical branch locations at the direction of any governmental authority if such banks’ electronic funds transfer systems (including for wire transfers) are open for use by customers on such day.

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

“Common Stock Equivalents” means any securities of the Company or its subsidiaries that would entitle the holder thereof to acquire at any time shares of Common Stock, including, without limitation, any debt, preferred stock, 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.

“Common Stock” means the Company’s common stock, no par value per share.

“Effective Date” means the effective date of the registration statement on Form S-1 (File No. 333-255229), including any related prospectus or prospectuses, for the registration of the Company’s securities under the Securities Act, that the Company has filed with the Commission.

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

“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.

“Rule 144” means Rule 144 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.

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

“Series A Preferred Stock” means the Company’s 8.0% Series A Cumulative Convertible Preferred Stock, no par value per share.

“Trading Day” means a day on which The Nasdaq Capital Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the 8.0% Series A Cumulative Convertible Preferred Stock and the Common Stock are 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).

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Ex A-2

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“Underwriting Agreement” means that certain Underwriting Agreement, dated as of June 9, 2021, by and between, the Company and ThinkEquity, a division of Fordham Financial Management, Inc., as representatives of the underwriters set forth therein.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Series A Preferred Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Series A Preferred Stock for such date (or the nearest preceding date) on the Trading Market on which the Series A Preferred 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 Trading Market, the volume weighted average price of a share of Series A Preferred Stock for such date (or the nearest preceding date) on the OTCQB or OTCQX as applicable, (c) if the Series A Preferred Stock is not then listed or quoted for trading on the OTCQB or OTCQX and if prices for 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 Series A Preferred Stock so reported, or (d) in all other cases, the fair market value of the Series A Preferred 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.

## Section 2. Exercise.

a) Exercise of the purchase rights represented by this Underwriter’s Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy (or e-mail attachment) of the Notice of Exercise Form annexed hereto. Within two (2) Trading Days following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Underwriter’s Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Underwriter’s Warrant has been exercised in full, in which case, the Holder shall surrender this Underwriter’s Warrant to the Company for cancellation within five (5) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Underwriter’s Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise Form within two (2) Business Days of receipt of such notice. **The Holder and any assignee, by acceptance of this Underwriter’s Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of Series A Preferred Stock under this Underwriter’s Warrant shall be \$24.97, subject to adjustment hereunder (the “Exercise Price”).

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Ex A-3

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c) Cashless Exercise. If at any time on or after the Initial Exercise Date, there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Underwriter’s 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 the number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = the VWAP on the Trading Day immediately preceding the date on which Holder elects to exercise this Underwriter’s Warrant by means of a “cashless exercise,” as set forth in the applicable Notice of Exercise;

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

(X) = the number of Warrant Shares that would be issuable upon exercise of this Underwriter’s Warrant in accordance with the terms of this Underwriter’s 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 registered characteristics of the Underwriter’s Warrants being exercised, and the holding period of the Underwriter’s Warrants being exercised may be tacked on to the holding period of the Warrant Shares. The Company agrees not to take any position contrary to this Section 2(c).

Notwithstanding anything herein to the contrary, on the Termination Date, this Underwriter’s Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall 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 (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder, or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 and, in either case, the Warrant Shares have been sold by the Holder prior to the Warrant Share Delivery Date (as defined below), and otherwise by physical delivery of a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is two (2) Trading Days after the delivery to the Company of the Notice of Exercise (such date, the “Warrant Share Delivery Date”). If the Warrant Shares can be delivered via DWAC, the transfer agent shall have received from the Company, at the expense of the Company, any legal opinions or other documentation required by it to deliver such Warrant Shares without legend (subject to receipt by the Company of reasonable back up documentation from the Holder, including with respect to affiliate status) and, if applicable and requested by the Company prior to the Warrant Share Delivery Date, the transfer agent shall have received from the Holder a confirmation of sale of the Warrant Shares (provided the requirement of the Holder to provide a confirmation as to the sale of Warrant Shares shall not be applicable to the issuance of unlegended Warrant Shares upon a cashless exercise of this Underwriter’s Warrant if the Warrant Shares are then eligible for resale pursuant to Rule 144(b)(1)). The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Underwriter’s Warrant has been exercised, with payment to the Company of the Exercise Price (or by cashless exercise, if permitted) and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such shares, having been paid. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the second Trading Day following the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Series A Preferred Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the second Trading Day following such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise.

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Ex. A-4

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

iii. Rescission Rights. If the Company fails to cause its transfer agent to deliver to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise; provided, however, that the Holder shall be required to return any Warrant Shares subject to any such rescinded exercise notice concurrently with the return to Holder of the aggregate Exercise Price paid to the Company for such Warrant Shares and the restoration of Holder’s right to acquire such Warrant Shares pursuant to this Underwriter’s Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

iv. 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 its transfer agent to transmit to the Holder the Warrant Shares pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder’s brokerage firm otherwise purchases, Series A Preferred Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a “Buy-In”), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the Series A Preferred Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Series A Preferred Stock that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, provided that such Holder provides reasonable evidence of the date and time of such sell order and (B) at the option of the Holder, either reinstate the portion of the Underwriter’s Warrant and equivalent number of Series A Preferred Stock for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of Series A Preferred Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases shares of Series A Preferred Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Series A Preferred 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 shares of Series A Preferred Stock upon exercise of the Underwriter’s Warrant as required pursuant to the terms hereof.

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Ex. A-5

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Underwriter’s Warrant. If, by reason of any adjustment made pursuant to Section 3, a Holder would be entitled, upon the exercise of such Warrant, to receive a fractional interest in a share, the Company shall, upon such exercise, round down to the nearest whole number of Warrant Shares to be issued to such Holder.

vi. 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 Underwriter’s Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all transfer agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

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

viii. Signature. This Section 2 and the exercise form attached hereto set forth the totality of the procedures required of the Holder in order to exercise this Underwriter’s Warrant. Without limiting the preceding sentences, no ink-original exercise form shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any exercise form be required in order to exercise this Underwriter’s Warrant. No additional legal opinion, other information or instructions shall be required of the Holder to exercise this Underwriter’s Warrant. The Company shall honor exercises of this Underwriter’s Warrant and shall deliver Shares underlying this Underwriter’s Warrant in accordance with the terms, conditions and time periods set forth herein.



e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Underwriter's Warrant, and a Holder shall not have the right to exercise any portion of this Underwriter's Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, 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), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). Except as set forth in the preceding sentence, for purposes of this Section 2(e), 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 Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Underwriter's Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Underwriter's Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Underwriter's Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Underwriter's Warrant is exercisable, 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 2(e), in determining the number of outstanding Common Stock, a Holder may rely on the number of outstanding 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 Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of Common Stock then outstanding. In any case, the number of outstanding Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Underwriter's Warrant, by the Holder or its Affiliates since the date as of which such number of outstanding Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of Common Stock issuable upon exercise of all warrants held by the Holder. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of Common Stock upon exercise of all Warrants held by the Holder and the provisions of this Section 2(e) 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 provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained 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 Underwriter's Warrant.

### Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Underwriter's Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on its Series A Preferred Stock or any other equity or equity equivalent securities payable in shares of Series A Preferred Stock (which, for avoidance of doubt, shall not include any shares of Series A Preferred Stock issued by the Company upon exercise of this Underwriter's Warrant), (ii) subdivides outstanding shares of Series A Preferred Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Series A Preferred Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Series A Preferred Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Series A Preferred Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Series A Preferred Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Underwriter's Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Underwriter's Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification. For the purposes of clarification, the Exercise Price of this Underwriter's Warrant will not be adjusted in the event that the Company or any Subsidiary thereof, as applicable, sells or grants any option to purchase, or sell or grant any right to repurchase, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any shares of Series A Preferred Stock, at an effective price per share less than the Exercise Price then in effect.

b) [RESERVED]

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Series A Preferred 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 Series A Preferred Stock acquirable upon complete exercise of this Underwriter's 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 Series A Preferred Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, 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 Underwriter's Warrant is outstanding, if the Company shall declare or make any dividend (other than cash dividends) or other distribution of its assets (or rights to acquire its assets) to holders of Series A Preferred Stock, by way of return of capital or otherwise (including, without limitation, any distribution of 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 Underwriter's 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 Series A Preferred Stock acquirable upon complete exercise of this Underwriter's 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 Series A Preferred Stock are to be determined for the participation in such Distribution (provided, however, 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). To the extent that this Underwriter's Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Underwriter's Warrant.

e) Fundamental Transaction. If, at any time while this Underwriter's Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, 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 shares of Common Stock, (iv) the Company, directly or indirectly, in one or

more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which all outstanding 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 or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Underwriter’s 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 limitation in Section 2(e) on the exercise of this Underwriter’s Warrant), the number of shares of Series A Preferred 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 by holders of Series A Preferred Stock as a result of such Fundamental Transaction for each share of Series A Preferred Share for which this Underwriter’s Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Underwriter’s 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 Series A Preferred 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 Series A Preferred 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 Underwriter’s Warrant 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 this Underwriter’s Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements prior to or during such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Underwriter’s Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Underwriter’s Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the Series A Preferred Stock acquirable and receivable upon exercise of this Underwriter’s Warrant (without regard to any limitations on the exercise of this Underwriter’s Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Series A Preferred Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Underwriter’s 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 Underwriter’s Warrant 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 Underwriter’s Warrant with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 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 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

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g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly send to the Holder (either via mail or e-mail) 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 Series A Preferred Stock or the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Series A Preferred Stock or the Common Stock, (C) the Company shall authorize the granting to all holders of the Series A Preferred Stock or the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock or Series A Preferred 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 are 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 mail, facsimile or email to the Holder at its last mailing address, facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least five (5) 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 or Series A Preferred 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 or Series A Preferred Stock of record shall be entitled to exchange their shares of Common Stock or shares of Series A Preferred 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 required to be provided hereunder 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. Provided such notice occurs prior to the Termination Date, the Holder shall remain entitled to exercise this Underwriter’s 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 4. Transfer of Warrant.

a) Transferability. Pursuant to FINRA Rule 5110(e)(1), neither this Underwriter’s Warrant nor any Warrant Shares issued upon exercise of this Underwriter’s Warrant shall be sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of effectiveness or commencement of sales of the offering pursuant to which this Underwriter’s Warrant is being issued, except the transfer of any security:

i. by operation of law or by reason of reorganization of the Company;

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ii. to any FINRA member firm participating in the offering and the officers or partners thereof, if all securities so transferred remain subject to the lock-up restriction in this Section 4(a) for the remainder of the time period;

iii. if the aggregate amount of securities of the Company held by the Holder or related person do not exceed 1% of the securities being offered;

iv. that is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund, and participating members in the aggregate do not own more than 10% of the equity in the fund; or

v. the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction in this Section 4(a) for the remainder of the time period.

Subject to the foregoing restriction, any applicable securities laws and the conditions set forth in Section 4(d), this Underwriter's Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Underwriter's Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Underwriter's Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Underwriter's Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Underwriter's Warrant not so assigned, and this Underwriter's Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Underwriter's Warrant to the Company unless the Holder has assigned this Underwriter's Warrant in full, in which case, the Holder shall surrender this Underwriter's Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Underwriter's Warrant in full. The Underwriter's Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Underwriter's Warrant issued.

b) New Warrants. This Underwriter's Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Underwriter's Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Underwriter's Warrant or Underwriter's Warrants in exchange for the Underwriter's Warrant or Underwriter's Warrants to be divided or combined in accordance with such notice. All Underwriter's Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Underwriter's Warrant and shall be identical with this Underwriter's Warrant except as to the number of Warrant Shares issuable pursuant thereto.

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

d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Underwriter's Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

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## Section 5. Registration Rights.

### 5.1 Demand Registration.

5.1.1 Grant of Right. The Company, upon written demand (a "Demand Notice") of the Holder(s) of at least 51% of the Warrants and/or the underlying Warrant Shares ("Majority Holders"), agrees to register, on one occasion, all or any portion of the Warrant Shares underlying the Warrants (collectively, the "Registrable Securities"). On such occasion, the Company will file a registration statement with the Commission covering the Registrable Securities within sixty (60) days after receipt of a Demand Notice and use its reasonable best efforts to have the registration statement declared effective promptly thereafter, subject to compliance with review by the Commission; provided, however, that the Company shall not be required to comply with a Demand Notice if the Company has filed a registration statement with respect to which the Holder is entitled to piggyback registration rights pursuant to Section 5.2 hereof and either: (i) the Holder has elected to participate in the offering covered by such registration statement or (ii) if such registration statement relates to an underwritten primary offering of securities of the Company, until the offering covered by such registration statement has been withdrawn or until thirty (30) days after such offering is consummated. The demand for registration may be made at any time beginning on the Initial Exercise Date and expiring on the fifth anniversary of the Effective Date. The Company covenants and agrees to give written notice of its receipt of any Demand Notice by any Holder(s) to all other registered Holders of the Warrants and/or the Registrable Securities within ten (10) days after the date of the receipt of any such Demand Notice.

5.1.2 Terms. The Company shall bear all fees and expenses attendant to the registration of the Registrable Securities pursuant to Section 5.1.1, but the Holders shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities. The Company agrees to use its reasonable best efforts to cause the filing required herein to become effective promptly and to qualify or register the Registrable Securities in such States as are reasonably requested by the Holder(s); provided, however, that in no event shall the Company be required to register the Registrable Securities in a State in which such registration would cause: (i) the Company to be obligated to register or license to do business in such State or submit to general service of process in such State, or (ii) the principal shareholders of the Company to be obligated to escrow their shares of capital stock of the Company. The Company shall cause any registration statement filed pursuant to the demand right granted under Section 5.1.1 to remain effective for a period of at least twelve (12) consecutive months after the date that the Holders of the Registrable Securities covered by such registration statement are first given the opportunity to sell all of such securities. The Holders shall only use the prospectuses provided by the Company to sell the Warrant Shares covered by such registration statement, and will immediately cease to use any prospectus furnished by the Company if the Company advises the Holder that such prospectus may no longer be used due to a material misstatement or omission. Notwithstanding the provisions of this Section 5.1.2, the Holder shall be entitled to a demand registration under this Section 5.1.2 on only one (1) occasion and such demand registration right shall terminate on the fifth anniversary of the date of the Underwriting Agreement (as defined below) in accordance with FINRA Rule 5110(g)(8).

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### 5.2 "Piggy-Back" Registration.

5.2.1 Grant of Right. If at any time on or after the Initial Exercise Date, there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder or if Rule 144 is not available to the Holder without any volume or other limitations, the Holder shall have the right, for a period of no more than three (3) years from the Initial Exercise Date, which is in accordance with applicable FINRA rules, to include the Warrant Shares as part of any other registration of securities filed by the Company (other than in connection with a transaction contemplated by Rule 145(a) promulgated under the Securities Act or pursuant to Form S-8 or any equivalent form); provided, however, that if, solely in connection with any primary underwritten public offering for the account of the Company, the managing underwriter(s) thereof shall, in its reasonable discretion, impose a limitation on the number of shares of Series A Preferred Stock which may be included in the Registration Statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such Registration Statement only such limited portion of the Warrant Shares with respect to which the Holder requested inclusion hereunder as the underwriter shall reasonably permit. Any exclusion of Warrant Shares shall be made pro rata among the Holders seeking to include Warrant Shares in proportion to the number of Warrant Shares sought to be included by such Holders; provided, however, that the Company shall not exclude any Warrant Shares unless the Company has first excluded all outstanding securities, the holders of which are not entitled to inclusion of such securities in such Registration Statement or are not entitled to pro rata inclusion with the Warrant Shares.

5.2.2 Terms. The Company shall bear all fees and expenses attendant to registering the Warrant Shares pursuant to Section 5.2.1 hereof, but the Holders shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Warrant Shares. In the event of such a proposed registration, the Company shall furnish the then Holders of outstanding Warrant Shares with not less than thirty (30) days written notice prior to the proposed date of filing of such registration statement. Such notice to the Holders shall continue to be given for each registration statement filed by the Company during the three (3) year period following the Initial Exercise Date until such time as all of the Warrant Shares have been sold by the Holder. The holders of the Warrant Shares shall exercise the "piggy-back" rights provided for herein by giving written notice within ten (10) days of the receipt of the Company's notice of its intention to file a registration statement. Except as otherwise provided in this Underwriter's Warrant, there shall be no limit on the number of times the Holder may request registration under this Section 5.2.2; provided, however,

that such registration rights shall terminate on the third anniversary of the Initial Exercise Date.

### 5.3 General Terms

5.3.1 Indemnification. The Company shall indemnify the Holder(s) of the Warrant Shares to be sold pursuant to any registration statement hereunder and each person, if any, who controls such Holders within the meaning of Section 15 of the Securities Act or Section 20 (a) of the Exchange Act against all loss, claim, damage, expense or liability (including all reasonable attorneys' fees and other expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which any of them may become subject under the Securities Act, the Exchange Act or otherwise, arising from such registration statement but only to the same extent and with the same effect as the provisions pursuant to which the Company has agreed to indemnify the Underwriters contained in Section 5.1 of the Underwriting Agreement. The Holder(s) of the Warrant Shares to be sold pursuant to such registration statement, and their successors and assigns, shall severally, and not jointly, indemnify the Company, against all loss, claim, damage, expense or liability (including all reasonable attorneys' fees and other expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which they may become subject under the Securities Act, the Exchange Act or otherwise, arising from information furnished by or on behalf of such Holders, or their successors or assigns, in writing, for specific inclusion in such registration statement to the same extent and with the same effect as the provisions contained in Section 5.2 of the Underwriting Agreement pursuant to which the Underwriters have agreed to indemnify the Company.

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5.3.2 Exercise of Warrants. Nothing contained in this Underwriter's Warrant shall be construed as requiring the Holder(s) to exercise their Underwriter's Warrants prior to or after the initial filing of any registration statement or the effectiveness thereof.

5.3.3 Documents Delivered to Holders. The Company shall furnish to each Holder participating in any of the foregoing offerings and to each underwriter of any such offering, if any, a signed counterpart, addressed to such Holder or underwriter, of: (i) an opinion of counsel to the Company, dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, an opinion dated the date of the closing under any underwriting agreement related thereto), and (ii) a "cold comfort" letter dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, a letter dated the date of the closing under the underwriting agreement) signed by the independent registered public accounting firm which has issued a report on the Company's financial statements included in such registration statement, in each case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) and, in the case of such accountants' letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities. The Company shall also deliver promptly to each Holder participating in the offering requesting the correspondence and memoranda described below and to the managing underwriter, if any, copies of all correspondence between the Commission and the Company, its counsel or auditors and all memoranda relating to discussions with the Commission or its staff with respect to the registration statement and permit each Holder and underwriter to do such investigation, upon reasonable advance notice, with respect to information contained in or omitted from the registration statement as it deems reasonably necessary to comply with applicable securities laws or rules of FINRA. Such investigation shall include access to books, records and properties and opportunities to discuss the business of the Company with its officers and independent auditors, all to such reasonable extent and at such reasonable times as any such Holder shall reasonably request.

5.3.4 Underwriting Agreement. If applicable, the Company shall enter into an underwriting agreement with the managing underwriter(s). Such agreement shall be reasonably satisfactory in form and substance to the Company, each Holder and such managing underwriters, and shall contain such representations, warranties and covenants by the Company and such other terms as are customarily contained in agreements of that type used by the managing underwriter. If applicable, the Holders shall be parties to any underwriting agreement relating to an underwritten sale of their Warrant Shares and may, at their option, require that any or all the representations, warranties and covenants of the Company to or for the benefit of such underwriters shall also be made to and for the benefit of such Holders. Such Holders shall not be required to make any representations or warranties to or agreements with the Company or the underwriters except as they may relate to such Holders, their Warrant Shares and their intended methods of distribution.

5.3.5 Documents to be Delivered by Holder(s). Each of the Holder(s) participating in any of the foregoing offerings shall furnish to the Company a completed and executed questionnaire provided by the Company requesting information customarily sought of selling security holders.

5.3.6 Damages. Should the registration or the effectiveness thereof required by Section 5.2 hereof be delayed by the Company or the Company otherwise fails to comply with such provisions, the Holder(s) shall, in addition to any other legal or other relief available to the Holder(s), be entitled to obtain specific performance or other equitable (including injunctive) relief against the threatened breach of such provisions or the continuation of any such breach, without the necessity of proving actual damages and without the necessity of posting bond or other security.

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### Section 6. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Underwriter's Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i).

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

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

d) Authorized Shares.

The Company covenants that, during the period the Underwriter's Warrant is outstanding, it will reserve from its authorized and unissued shares of Series A Preferred Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Underwriter's Warrant. The Company further covenants that its issuance of this Underwriter's 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 Underwriter's 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 Trading Market upon which the Series A Preferred 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 Underwriter's Warrant will, upon exercise of the purchase rights represented by this Underwriter's Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Underwriter's Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Underwriter's Warrant against impairment. Without limiting the generality of the

foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Underwriter's Warrant and (iii) 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 Underwriter's Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Underwriter's 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.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Underwriter's Warrant shall be determined in accordance with the provisions of the Underwriting Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Underwriter's Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) 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 Underwriter's Warrant or the Underwriting Agreement, if the Company willfully and knowingly fails to comply with any provision of this Underwriter's 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.

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

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Underwriter's 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 shares of Series A Preferred Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) 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 Underwriter's 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 Underwriter's 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.

k) Successors and Assigns. Subject to applicable securities laws, this Underwriter's Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Underwriter's Warrant are intended to be for the benefit of any Holder from time to time of this Underwriter's Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Underwriter's Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

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

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

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(Signature Page Follows)

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

**HARBOR CUSTOM DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOTICE OF EXERCISE**

TO: HARBOR CUSTOM DEVELOPMENT, INC.  
\_\_\_\_\_

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

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

in lawful money of the United States; or

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

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

\_\_\_\_\_

The Warrant Shares shall be delivered to the following DWAC Account Number or by physical delivery of a certificate to:

\_\_\_\_\_

\_\_\_\_\_

(4) Accredited Investor. If the Underwriter's Warrant is being exercised via cash exercise, the undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

Signature of Authorized Signatory of Investing Entity: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

Ex A-18

**ASSIGNMENT FORM**

(To assign the foregoing warrant, execute this form and supply required information. Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [ ] all of or [ ] shares of the foregoing Underwriter's Warrant and all rights evidenced thereby are hereby assigned to

\_\_\_\_\_ whose address is

\_\_\_\_\_.

\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

\_\_\_\_\_

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Underwriter's Warrant, without alteration or enlargement or any change whatsoever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Underwriter's Warrant.

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**EXHIBIT A-2**

**Form of Underwriter's Warrant (Common Stock Warrant)**

**THE REGISTERED HOLDER OF THIS UNDERWRITER'S WARRANT BY ITS ACCEPTANCE HEREOF, AGREES THAT THIS UNDERWRITER'S WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR HYPOTHECATED, OR BE THE SUBJECT OF ANY HEDGING, SHORT SALE, DERIVATIVE, PUT, OR CALL TRANSACTION THAT WOULD RESULT IN THE EFFECTIVE ECONOMIC DISPOSITION OF SUCH SECURITIES BY ANY PERSON FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS IMMEDIATELY FOLLOWING THE DATE OF EFFECTIVENESS OF THE PUBLIC OFFERING OF THE COMPANY'S SECURITIES PURSUANT TO REGISTRATION STATEMENT NO. 333-255229 AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION, EXCEPT IN ACCORDANCE WITH FINRA RULE 5110(e)(2).**

THIS UNDERWRITER'S WARRANT IS NOT EXERCISABLE PRIOR TO December 6, 2021. VOID AFTER 5:00 P.M., EASTERN TIME, June 9, 2026.

**UNDERWRITER'S WARRANT TO PURCHASE COMMON STOCK WARRANTS**

**HARBOR CUSTOM DEVELOPMENT, INC.**

Common Stock Warrants or Warrant Securities: 36,000

Initial Exercise Date: December 6, 2021

**THIS UNDERWRITER'S WARRANT TO PURCHASE COMMON STOCK WARRANTS** (the "Underwriter Warrant") certifies that, for value received, ThinkEquity, a division of Fordham Financial Management, Inc., or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after December 6, 2021 (the "Initial Exercise Date") and, in accordance with FINRA Rule 5110(f)(2)(G)(i), prior to at 5:00 p.m. (New York time) on the date that is five (5) years following the Effective Date (the "Termination Date"), but not thereafter, to subscribe for and purchase from Harbor Custom Development, Inc., a Washington corporation (the "Company"), up to 36,000 warrants to purchase common stock, no par value per share, of the Company (interchangeably, the "Common Stock Warrants" or "Warrant Securities"), as subject to adjustment hereunder. The purchase price of one Common Stock Warrant under this Underwriter's Warrant shall be equal to the Exercise Price, as defined in Section 2(b). The Common Stock Warrants issued upon exercise of this Underwriter's Warrant will be governed by that certain Warrant Agency Agreement between us and Mountain Share Transfer, LLC, as warrant agent (the "Warrant Agent"), dated June 9, 2021. It is intended that the Common Stock Warrants issued upon exercise of this Underwriter's Warrant will be listed on the Nasdaq Capital Market under the symbol "HCDIW."

Section 1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated in this Section 1:

“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.

“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 that banks shall not be deemed to be authorized or obligated to be closed due to a “shelter in place,” “non-essential employee” or similar closure of physical branch locations at the direction of any governmental authority if such banks’ electronic funds transfer systems (including for wire transfers) are open for use by customers on such day.

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

“Common Stock Equivalents” means any securities of the Company or its subsidiaries that would entitle the holder thereof to acquire at any time shares of Common Stock, including, without limitation, any debt, preferred stock, 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.

“Common Stock” means the Company’s common stock, no par value per share.

“Effective Date” means the effective date of the registration statement on Form S-1 (File No. 333-255229) including any related prospectus or prospectuses, for the registration of the Company’s securities under the Securities Act, that the Company has filed with the Commission.

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

“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.

“Rule 144” means Rule 144 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.

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

“Series A Preferred Stock” means the Company’s 8.0% Series A Cumulative Convertible Preferred Stock, no par value per share.

“Trading Day” means a day on which The Nasdaq Capital Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the 8.0% Series A Cumulative Convertible Preferred Stock and the Common Stock are 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).

“Underwriting Agreement” means that certain Underwriting Agreement, dated as of June 9, 2021, by and between, the Company and ThinkEquity, a division of Fordham Financial Management, Inc., as representative of the several underwriters set forth therein.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock Warrants are then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock Warrants for such date (or the nearest preceding date) on the Trading Market on which the Common Stock Warrants are 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 Trading Market, the volume weighted average price of a Common Stock Warrant for such date (or the nearest preceding date) on the OTCQB or OTCQX as applicable, (c) if the Common Stock Warrants are not then listed or quoted for trading on the 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 Common Stock Warrant so reported, or (d) in all other cases, the fair market value of the Common Stock Warrant 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.

## Section 2. Exercise.

a) Exercise of the purchase rights represented by this Underwriter’s Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy (or e-mail attachment) of the Notice of Exercise Form annexed hereto. Within two (2) Trading Days following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Securities specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Underwriter’s Warrant to the Company until the Holder has purchased all of the Warrant Securities available hereunder and the Underwriter’s Warrant has been exercised in full, in which case, the Holder shall surrender this Underwriter’s Warrant to the Company for cancellation within five (5) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Underwriter’s Warrant resulting in purchases of a portion of the total number of Warrant Securities available hereunder shall have the effect of lowering the outstanding number of Warrant Securities purchasable hereunder in an amount equal to the applicable number of Warrant Securities purchased. The Holder and the Company shall maintain records showing the number of Warrant Securities purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise Form within two (2) Business Days of receipt of such notice. **The Holder and any assignee, by acceptance of this Underwriter’s Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Securities hereunder, the number of Warrant Securities available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per Common Stock Warrant under this Underwriter’s Warrant shall be \$0.01, subject to adjustment hereunder (the “Exercise Price”). The Common Stock Warrants underlying this Underwriter Warrant shall have the same terms and conditions of the Public Warrants (as such term is defined in the Underwriting Agreement) sold pursuant to the Underwriting Agreement, *including*, the initial Exercise Price (as such term is defined in the Public Warrants) of each Common Stock Warrant shall be \$5.00 per each share of Common Stock underlying such Common Stock Warrant.

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c) Cashless Exercise. If at any time on or after the Initial Exercise Date, there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Securities to the Holder, then this Underwriter's 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 the number of Warrant Securities equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

- (A) = the VWAP on the Trading Day immediately preceding the date on which Holder elects to exercise this Underwriter's Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise;
- (B) = the Exercise Price of this Underwriter's Warrant, as adjusted hereunder; and
- (X) = the number of Warrant Securities that would be issuable upon exercise of this Underwriter's Warrant in accordance with the terms of this Underwriter's Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Securities 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 Securities shall take on the registered characteristics of the Underwriter's Warrants being exercised, and the holding period of the Underwriter's Warrants being exercised may be tacked on to the holding period of the Warrant Securities. The Company agrees not to take any position contrary to this

Underwriter's Warrants being exercised may be tacked on to the holding period of the Warrant Securities. The Company agrees not to take any position contrary to this Section 2(c).

Notwithstanding anything herein to the contrary, on the Termination Date, this Underwriter's Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Securities Upon Exercise. The Company shall cause the Warrant Securities 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 (A) there is an effective registration statement permitting the issuance of the Warrant Securities to or resale of the Warrant Securities by Holder, or (B) the Warrant Securities are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 and, in either case, the Warrant Securities have been sold by the Holder prior to the Warrant Securities Delivery Date (as defined below), and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Securities to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is two (2) Trading Days after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Securities Delivery Date"). If the Warrant Securities can be delivered via DWAC, the transfer agent shall have received from the Company, at the expense of the Company, any legal opinions or other documentation required by it to deliver such Warrant Securities without legend (subject to receipt by the Company of reasonable back up documentation from the Holder, including with respect to affiliate status) and, if applicable and requested by the Company prior to the Warrant Securities Delivery Date, the transfer agent shall have received from the Holder a confirmation of sale of the Warrant Securities (provided the requirement of the Holder to provide a confirmation as to the sale of Warrant Securities shall not be applicable to the issuance of unlegended Warrant Securities upon a cashless exercise of this Underwriter's Warrant if the Warrant Securities are then eligible for resale pursuant to Rule 144(b)(1)). The Warrant Securities shall be deemed to have been issued, and Holder or any other person so designated to be named herein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Underwriter's Warrant has been exercised, with payment to the Company of the Exercise Price (or by cashless exercise, if permitted) and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such shares, having been paid. If the Company fails for any reason to deliver to the Holder the Warrant Securities subject to a Notice of Exercise by the second Trading Day following the Warrant Securities Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Securities subject to such exercise (based on the VWAP of the Common Stock Warrant on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after the second Trading Day following such Warrant Securities Delivery Date until such Warrant Securities are delivered or Holder rescinds such exercise.

Ex A-23

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

iii. Rescission Rights. If the Company fails to cause its transfer agent to deliver to the Holder the Warrant Securities pursuant to Section 2(d)(i) by the Warrant Securities Delivery Date, then the Holder will have the right to rescind such exercise; provided, however, that the Holder shall be required to return any Warrant Securities or Common Stock subject to any such rescinded exercise notice concurrently with the return to Holder of the aggregate Exercise Price paid to the Company for such Warrant Securities and the restoration of Holder's right to acquire such Warrant Securities pursuant to this Underwriter's Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Securities Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause its transfer agent to transmit to the Holder the Warrant Securities pursuant to an exercise on or before the Warrant Securities 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 Share Warrants to deliver in satisfaction of a sale by the Holder of the Warrant Securities which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the Common Stock Warrants so purchased exceeds (y) the amount obtained by multiplying (1) the number of Common Stock Warrants that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, provided that such Holder provides reasonable evidence of the date and time of such sell order and (B) at the option of the Holder, either reinstate the portion of the Underwriter's Warrant and equivalent number of Common Stock Warrants for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of Common Stock Warrants that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock Warrants having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Common Stock Warrants with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. 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 Warrants upon exercise of the Underwriter's Warrant as required pursuant to the terms hereof.

Ex A-24

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v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Underwriter's Warrant. If, by reason of any adjustment made pursuant to Section 3, a Holder would be entitled, upon the exercise of such Underwriter's Warrant, to receive a fractional interest in a share, the Company shall, upon such exercise, round down to the nearest whole number of Warrant Securities to be issued to such Holder.



vi. Charges, Taxes and Expenses. Issuance of Warrant Securities 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 Securities, all of which taxes and expenses shall be paid by the Company, and such Warrant Securities 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 Securities are to be issued in a name other than the name of the Holder, this Underwriter's Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all transfer agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Securities.

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

viii. Signature. This Section 2 and the exercise form attached hereto set forth the totality of the procedures required of the Holder in order to exercise this Underwriter's Warrant. Without limiting the preceding sentences, no ink-original exercise form shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any exercise form be required in order to exercise this Underwriter's Warrant. No additional legal opinion, other information or instructions shall be required of the Holder to exercise this Underwriter's Warrant. The Company shall honor exercises of this Underwriter's Warrant and shall deliver Warrant Securities underlying this Underwriter's Warrant in accordance with the terms, conditions and time periods set forth herein.

Ex A-25

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Underwriter's Warrant, and a Holder shall not have the right to exercise any portion of this Underwriter's Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, 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), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). Except as set forth in the preceding sentence, for purposes of this Section 2(e), 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 Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Underwriter's Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Underwriter's Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Underwriter's Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Underwriter's Warrant is exercisable, 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 2(e), 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 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 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 Underwriter's Warrant, 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 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of all warrants held by the Holder. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), 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 shares of Common Stock upon exercise of all warrants held by the Holder and the provisions of this Section 2(e) 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 provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained 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 Underwriter's Warrant.

### Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Underwriter's Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares 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 shares of Common Stock issued by the Company upon exercise of this Underwriter's Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Underwriter's Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Underwriter's Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification. For the purposes of clarification, the Exercise Price of this Underwriter's Warrant will not be adjusted in the event that the Company or any Subsidiary thereof, as applicable, sells or grants any option to purchase, or sell or grant any right to repurchase, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any shares of Common Stock or Common Stock Equivalents, at an effective price per share less than the Exercise Price then in effect.

Ex A-26

b) [RESERVED]

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Underwriter's 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, 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 shares of 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 Underwriter's Warrant is outstanding, if the Company shall declare or make any dividend (other than cash dividends) or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of 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 Underwriter’s 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 Underwriter’s Warrant or the Warrant Securities (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, 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). To the extent that this Underwriter’s Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Underwriter’s Warrant.

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Ex A-27

e) Fundamental Transaction. If, at any time while this Underwriter’s Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, 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 shares of Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which all outstanding shares of 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 or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Underwriter’s Warrant, the Holder shall have the right to receive, for each Warrant Security 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 limitation in Section 2(e) on the exercise of this Underwriter’s 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 by holders of Common Stock as a result of such Fundamental Transaction for each share of Common Stock for which this Underwriter’s Warrant or the Warrant Securities is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Underwriter’s 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 Underwriter’s Warrant 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 this Underwriter’s Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements prior to or during such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Underwriter’s Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Underwriter’s Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Underwriter’s Warrant (without regard to any limitations on the exercise of this Underwriter’s Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Underwriter’s 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 Underwriter’s Warrant 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 Underwriter’s Warrant with the same effect as if such Successor Entity had been named as the Company herein.

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Ex A-28

f) Calculations. All calculations under this Section 3 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 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly send to the Holder (either via mail or e-mail) a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Securities 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 Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company 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 shares of Common Stock are 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 mail, facsimile or email to the Holder at its last mailing address, facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least five (5) 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 Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice required to be provided hereunder 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. Provided such notice occurs prior to the Termination Date, the Holder shall remain entitled to exercise this Underwriter’s 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.

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Ex A-29

a) Transferability. Pursuant to FINRA Rule 5110(e)(1), neither this Underwriter's Warrant nor any Warrant Securities issued upon exercise of this Underwriter's Warrant shall be sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of effectiveness or commencement of sales of the offering pursuant to which this Underwriter's Warrant is being issued, except the transfer of any security:

i. by operation of law or by reason of reorganization of the Company;

ii. to any FINRA member firm participating in the offering and the officers or partners thereof, if all securities so transferred remain subject to the lock-up restriction in this Section 4(a) for the remainder of the time period;

iii. if the aggregate amount of securities of the Company held by the Holder or related person do not exceed 1% of the securities being offered;

iv. that is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund, and participating members in the aggregate do not own more than 10% of the equity in the fund; or

v. the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction in this Section 4(a) for the remainder of the time period.

Subject to the foregoing restriction, any applicable securities laws and the conditions set forth in Section 4(d), this Underwriter's Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Underwriter's Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Underwriter's Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Underwriter's Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Underwriter's Warrant not so assigned, and this Underwriter's Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Underwriter's Warrant to the Company unless the Holder has assigned this Underwriter's Warrant in full, in which case, the Holder shall surrender this Underwriter's Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Underwriter's Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Securities without having a new Warrant issued.

b) New Warrants. This Underwriter's Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Underwriter's Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Underwriter's Warrant or Underwriter's Warrants in exchange for the Underwriter's Warrant or Underwriter's Warrants to be divided or combined in accordance with such notice. All Underwriter's Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Underwriter's Warrant and shall be identical with this Underwriter's Warrant except as to the number of Warrant Securities issuable pursuant thereto.

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

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d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Underwriter's Warrant and, upon any exercise hereof, will acquire the Warrant Securities issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Securities or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

## Section 5. Registration Rights.

### 5.1 Demand Registration.

5.1.1 Grant of Right. The Company, upon written demand (a "Demand Notice") of the Holder(s) of at least 51% of the Warrant Securities ("Majority Holders"), agrees to register, on one occasion, all or any portion of the Warrant Securities and the shares of Common Stock underlying the Warrant Securities (collectively, the "Registrable Securities"). On such occasion, the Company will file a registration statement with the Commission covering the Registrable Securities within sixty (60) days after receipt of a Demand Notice and use its reasonable best efforts to have the registration statement declared effective promptly thereafter, subject to compliance with review by the Commission; provided, however, that the Company shall not be required to comply with a Demand Notice if the Company has filed a registration statement with respect to which the Holder is entitled to piggyback registration rights pursuant to Section 5.2 hereof and either: (i) the Holder has elected to participate in the offering covered by such registration statement or (ii) if such registration statement relates to an underwritten primary offering of securities of the Company, until the offering covered by such registration statement has been withdrawn or until thirty (30) days after such offering is consummated. The demand for registration may be made at any time beginning on the Initial Exercise Date and expiring on the fifth anniversary of the Effective Date. The Company covenants and agrees to give written notice of its receipt of any Demand Notice by any Holder(s) to all other registered Holders of the Underwriter's Warrants and/or the Registrable Securities within ten (10) days after the date of the receipt of any such Demand Notice.

5.1.2 Terms. The Company shall bear all fees and expenses attendant to the registration of the Registrable Securities pursuant to Section 5.1.1, but the Holders shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities. The Company agrees to use its reasonable best efforts to cause the filing required herein to become effective promptly and to qualify or register the Registrable Securities in such States as are reasonably requested by the Holder(s); provided, however, that in no event shall the Company be required to register the Registrable Securities in a State in which such registration would cause: (i) the Company to be obligated to register or license to do business in such State or submit to general service of process in such State, or (ii) the principal shareholders of the Company to be obligated to escrow their shares of capital stock of the Company. The Company shall cause any registration statement filed pursuant to the demand right granted under Section 5.1.1 to remain effective for a period of at least twelve (12) consecutive months after the date that the Holders of the Registrable Securities covered by such registration statement are first given the opportunity to sell all of such securities. The Holders shall only use the prospectuses provided by the Company to sell the Registrable Securities covered by such registration statement, and will immediately cease to use any prospectus furnished by the Company if the Company advises the Holder that such prospectus may no longer be used due to a material misstatement or omission. Notwithstanding the provisions of this Section 5.1.2, the Holder shall be entitled to a demand registration under this Section 5.1.2 on only one (1) occasion and such demand registration right shall terminate on the fifth anniversary of the date of the Underwriting Agreement (as defined below) in accordance with FINRA Rule 5110(g)(8).

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### 5.2 "Piggy-Back" Registration.

5.2.1 Grant of Right. If at any time on or after the Initial Exercise Date, there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Securities, including the shares of Common Stock underlying the Warrant Securities, to the Holder or if Rule 144 is not available to the Holder without any volume or other limitations, the Holder shall have the right, for a period of no more than three (3) years from the Initial Exercise Date, which is in accordance

with applicable FINRA rules, to include the Warrant Securities, including the shares of Common Stock underlying the Warrant Securities, as part of any other registration of securities filed by the Company (other than in connection with a transaction contemplated by Rule 145(a) promulgated under the Securities Act or pursuant to Form S-8 or any equivalent form); provided, however, that if, solely in connection with any primary underwritten public offering for the account of the Company, the managing underwriter(s) thereof shall, in its reasonable discretion, impose a limitation on the number of Warrant Securities or shares of Common Stock underlying the Warrant Securities which may be included in the Registration Statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such Registration Statement only such limited portion of the Warrant Securities and shares of Common Stock underlying such Warrant Securities with respect to which the Holder requested inclusion hereunder as the underwriter shall reasonably permit. Any exclusion of Warrant Securities or shares of Common Stock underlying such Warrant Securities shall be made pro rata among the Holders seeking to include Warrant Securities and underlying shares of Common Stock in proportion to the number of Warrant Securities sought to be included by such Holders; provided, however, that the Company shall not exclude any Warrant Securities or underlying shares of Common Stock unless the Company has first excluded all outstanding securities, the holders of which are not entitled to inclusion of such securities in such Registration Statement or are not entitled to pro rata inclusion with the Warrant Securities and underlying shares of Common Stock.

5.2.2 Terms. The Company shall bear all fees and expenses attendant to registering the Registrable Securities pursuant to Section 5.2.1 hereof, but the Holders shall pay any and all underwriting commissions and the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities. In the event of such a proposed registration, the Company shall furnish the then Holders of outstanding Registrable Securities with not less than thirty (30) days written notice prior to the proposed date of filing of such registration statement. Such notice to the Holders shall continue to be given for each registration statement filed by the Company during the three (3) year period following the Initial Exercise Date until such time as all of the Registrable Securities have been sold by the Holder. The holders of the Registrable Securities shall exercise the "piggy-back" rights provided for herein by giving written notice within ten (10) days of the receipt of the Company's notice of its intention to file a registration statement. Except as otherwise provided in this Underwriter's Warrant, there shall be no limit on the number of times the Holder may request registration under this Section 5.2.2; provided, however, that such registration rights shall terminate on the third anniversary of the Initial Exercise Date.

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### 5.3 General Terms

5.3.1 Indemnification. The Company shall indemnify the Holder(s) of the Warrant Securities to be sold pursuant to any registration statement hereunder and each person, if any, who controls such Holders within the meaning of Section 15 of the Securities Act or Section 20 (a) of the Exchange Act against all loss, claim, damage, expense or liability (including all reasonable attorneys' fees and other expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which any of them may become subject under the Securities Act, the Exchange Act or otherwise, arising from such registration statement but only to the same extent and with the same effect as the provisions pursuant to which the Company has agreed to indemnify the Underwriters contained in Section 5.1 of the Underwriting Agreement. The Holder(s) of the Warrant Securities to be sold pursuant to such registration statement, and their successors and assigns, shall severally, and not jointly, indemnify the Company, against all loss, claim, damage, expense or liability (including all reasonable attorneys' fees and other expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which they may become subject under the Securities Act, the Exchange Act or otherwise, arising from information furnished by or on behalf of such Holders, or their successors or assigns, in writing, for specific inclusion in such registration statement to the same extent and with the same effect as the provisions contained in Section 5.2 of the Underwriting Agreement pursuant to which the Underwriters have agreed to indemnify the Company.

5.3.2 Exercise of Warrants. Nothing contained in this Underwriter's Warrant shall be construed as requiring the Holder(s) to exercise their Underwriter's Warrants prior to or after the initial filing of any registration statement or the effectiveness thereof.

5.3.3 Documents Delivered to Holders. The Company shall furnish to each Holder participating in any of the foregoing offerings and to each underwriter of any such offering, if any, a signed counterpart, addressed to such Holder or underwriter, of: (i) an opinion of counsel to the Company, dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, an opinion dated the date of the closing under any underwriting agreement related thereto), and (ii) a "cold comfort" letter dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, a letter dated the date of the closing under the underwriting agreement) signed by the independent registered public accounting firm which has issued a report on the Company's financial statements included in such registration statement, in each case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) and, in the case of such accountants' letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities. The Company shall also deliver promptly to each Holder participating in the offering requesting the correspondence and memoranda described below and to the managing underwriter, if any, copies of all correspondence between the Commission and the Company, its counsel or auditors and all memoranda relating to discussions with the Commission or its staff with respect to the registration statement and permit each Holder and underwriter to do such investigation, upon reasonable advance notice, with respect to information contained in or omitted from the registration statement as it deems reasonably necessary to comply with applicable securities laws or rules of FINRA. Such investigation shall include access to books, records and properties and opportunities to discuss the business of the Company with its officers and independent auditors, all to such reasonable extent and at such reasonable times as any such Holder shall reasonably request.

5.3.4 Underwriting Agreement. If applicable, the Company shall enter into an underwriting agreement with the managing underwriter(s). Such agreement shall be reasonably satisfactory in form and substance to the Company, each Holder and such managing underwriters, and shall contain such representations, warranties and covenants by the Company and such other terms as are customarily contained in agreements of that type used by the managing underwriter. If applicable, the Holders shall be parties to any underwriting agreement relating to an underwritten sale of their Warrant Securities and underlying Common Stock and may, at their option, require that any or all the representations, warranties and covenants of the Company to or for the benefit of such underwriters shall also be made to and for the benefit of such Holders. Such Holders shall not be required to make any representations or warranties to or agreements with the Company or the underwriters except as they may relate to such Holders, their Warrant Securities and their intended methods of distribution.

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Ex A-33

5.3.5 Documents to be Delivered by Holder(s). Each of the Holder(s) participating in any of the foregoing offerings shall furnish to the Company a completed and executed questionnaire provided by the Company requesting information customarily sought of selling security holders.

5.3.6 Damages. Should the registration or the effectiveness thereof required by Section 5.2 hereof be delayed by the Company or the Company otherwise fails to comply with such provisions, the Holder(s) shall, in addition to any other legal or other relief available to the Holder(s), be entitled to obtain specific performance or other equitable (including injunctive) relief against the threatened breach of such provisions or the continuation of any such breach, without the necessity of proving actual damages and without the necessity of posting bond or other security.

### Section 6. Miscellaneous

a) No Rights as Stockholder Until Exercise. This Underwriter's Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i).

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

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

d) Authorized Shares.

The Company covenants that, during the period the Underwriter's Warrant is outstanding, it will reserve from its authorized and unissued shares of Common Stock a sufficient number of shares to provide for the issuance of the shares of Common Stock underlying the Warrant Securities upon the exercise of any purchase rights under this Underwriter's Warrant. The Company further covenants that its issuance of this Underwriter's Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Securities upon the exercise of the purchase rights under this Underwriter's Warrant (and the issuance of the shares of Common Stock underlying such Warrant Securities). The Company will take all such reasonable action as may be necessary to assure that such Warrant Securities may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the 8.0% Series A Cumulative Convertible Preferred Stock, the Common Stock Warrants and the Common Stock may be listed. The Company covenants that all Warrant Securities (and underlying shares of Common Stock) which may be issued upon the exercise of the purchase rights represented by this Underwriter's Warrant will, upon exercise of the purchase rights represented by this Underwriter's Warrant and payment for such Warrant Securities in accordance herewith (and payment for the underlying shares of Common Stock upon exercise of such Warrant Securities), 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).

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Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Underwriter's Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Underwriter's Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any shares of Common Stock underlying the Warrant Securities above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Securities upon the exercise of this Underwriter's Warrant (and validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of such Warrant Securities) and (iii) 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 Underwriter's Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Securities for which this Underwriter's 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.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Underwriter's Warrant shall be determined in accordance with the provisions of the Underwriting Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Securities acquired upon the exercise of this Underwriter's Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) 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 Underwriter's Warrant or the Underwriting Agreement, if the Company willfully and knowingly fails to comply with any provision of this Underwriter's 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.

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

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Underwriter's Warrant to purchase Warrant Securities, 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 Warrant or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

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j) 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 Underwriter's 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 Underwriter's 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.

k) Successors and Assigns. Subject to applicable securities laws, this Underwriter's Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Underwriter's Warrant are intended to be for the benefit of any Holder from time to time of this Underwriter's Warrant and shall be enforceable by the Holder or holder of Warrant Securities.

l) Amendment. This Underwriter's Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

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

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

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(Signature Page Follows)

Ex A-36

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Ex. A-37

**NOTICE OF EXERCISE**

TO: HARBOR CUSTOM DEVELOPMENT, INC.  
\_\_\_\_\_

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

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

in lawful money of the United States; or

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

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

\_\_\_\_\_

The Warrant Securities shall be delivered to the following DWAC Account Number or by physical delivery of a certificate to:

\_\_\_\_\_

\_\_\_\_\_

(4) Accredited Investor. If the Underwriter's Warrant is being exercised via cash exercise, the undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

Signature of Authorized Signatory of Investing Entity: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

Ex. A-38

**ASSIGNMENT FORM**

(To assign the foregoing warrant, execute this form and supply required information. Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [ ] all of or [ ] shares of the foregoing Underwriter's Warrant and all rights evidenced thereby are hereby assigned to

\_\_\_\_\_ whose address is

\_\_\_\_\_.

\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

\_\_\_\_\_

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Underwriter's Warrant, without alteration or enlargement or any change whatsoever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Underwriter's Warrant.

Ex. A-39

**EXHIBIT B**

ThinkEquity  
A Division of Fordham Financial Management, Inc.  
17 State Street, 22<sup>nd</sup> Floor  
New York, NY 10004

As Representative of the several Underwriters named on Schedule 1 to the Underwriting Agreement referenced below

Ladies and Gentlemen:

The undersigned understands that ThinkEquity, a Division of Fordham Financial Management, Inc. (the “**Representative**”), proposes to enter into an Underwriting Agreement (the “**Underwriting Agreement**”) with Harbor Custom Development, Inc., a Washington corporation (the “**Company**”), providing for the public offering (the “**Public Offering**”) of shares of cumulative convertible preferred stock, no par value per share (the “**Preferred Stock**”), convertible into common stock, no par value, of the Company (the “**Common Shares**”), and warrants (the “**Warrants**”) to purchase Common Stock.

To induce the Representative to continue its efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of the Representative, the undersigned will not, during the period commencing on the date hereof and ending 90 days after the date of the closing of the Public Offering (the “**Lock-Up Period**”), (1) offer, pledge, sell, contract to sell, grant, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Shares or any securities convertible into or exercisable or exchangeable for Common Shares, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the “**Lock-Up Securities**”); (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Lock-Up Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise; (3) make any demand for or exercise any right with respect to the registration of any Lock-Up Securities; or (4) publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement relating to any Lock-Up Securities. Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer Lock-Up Securities without the prior written consent of the Representative in connection with (a) transactions relating to Lock-Up Securities acquired in open market transactions after the completion of the Public Offering; provided that no filing under Section 13 or Section 16(a) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or other public announcement shall be required or shall be voluntarily made in connection with subsequent sales of Lock-Up Securities acquired in such open market transactions; (b) transfers of Lock-Up Securities as a *bona fide* gift, by will or intestacy or to a family member or trust for the benefit of the undersigned or a family member (for purposes of this lock-up agreement, “family member” means any relationship by blood, marriage or adoption, not more remote than first cousin); (c) transfers of Lock-Up Securities to a charity or educational institution; (d) if the undersigned is a corporation, partnership, limited liability company or other business entity, (i) any transfers of Lock-Up Securities to another corporation, partnership or other business entity that controls, is controlled by or is under common control with the undersigned or (ii) distributions of Lock-Up Securities to members, partners, stockholders, subsidiaries or affiliates (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned; (e) if the undersigned is a trust, to a trustee or beneficiary of the trust; provided that in the case of any transfer pursuant to the foregoing clauses (b), (c) (d) or (e), (i) any such transfer shall not involve a disposition for value, (ii) each transferee shall sign and deliver to the Representative a lock-up agreement substantially in the form of this lock-up agreement and (iii) no filing under Section 13 or Section 16(a) of the Exchange Act or other public announcement shall be required or shall be voluntarily made; (f) the receipt by the undersigned from the Company of Common Shares upon the vesting of restricted stock awards or stock units or upon the exercise of options to purchase the Company’s Common Shares issued under an equity incentive plan of the Company or an employment arrangement described in the Pricing Prospectus (as defined in the Underwriting Agreement) (the “**Plan Shares**”) or the transfer of Common Shares or any securities convertible into Common Shares to the Company upon a vesting event of the Company’s securities or upon the exercise of options to purchase the Company’s securities, in each case on a “cashless” or “net exercise” basis or to cover tax obligations of the undersigned in connection with such vesting or exercise, but only to the extent such right expires during the Lock-up Period, provided that no filing under Section 13 or Section 16(a) of the Exchange Act or other public announcement shall be required or shall be voluntarily made within 90 days after the date of the closing of the Public Offering, and after such 90<sup>th</sup> day, if the undersigned is required to file a report under Section 13 or Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of Common Shares during the Lock-Up Period, the undersigned shall include a statement in such schedule or report to the effect that the purpose of such transfer was to cover tax withholding obligations of the undersigned in connection with such vesting or exercise and, provided further, that the Plan Shares shall be subject to the terms of this lock-up agreement; (g) the transfer of Lock-Up Securities pursuant to agreements described in the Pricing Prospectus under which the Company has the option to repurchase such securities or a right of first refusal with respect to the transfer of such securities, provided that if the undersigned is required to file a report under Section 13 or Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of Common Shares during the Lock-Up Period, the undersigned shall include a statement in such schedule or report describing the purpose of the transaction; (h) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Lock-Up Securities, provided that (i) such plan does not provide for the transfer of Lock-Up Securities during the Lock-Up Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such public announcement or filing shall include a statement to the effect that no transfer of Lock-Up Securities may be made under such plan during the Lock-Up Period; (i) the transfer of Lock-Up Securities that occurs by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce settlement, provided that the transferee agrees to sign and deliver a lock-up agreement substantially in the form of this lock-up agreement for the balance of the Lock-Up Period, and provided further, that any filing under Section 13 or Section 16(a) of the Exchange Act that is required to be made during the Lock-Up Period as a result of such transfer shall include a statement that such transfer has occurred by operation of law; and (j) the transfer of Lock-Up Securities pursuant to a bona fide third party tender offer, merger, consolidation or other similar transaction made to all holders of the Common Shares involving a change of control (as defined below) of the Company after the closing of the Public Offering and approved by the Company’s board of directors; provided that in the event that the tender offer, merger, consolidation or other such transaction is not completed, the Lock-Up Securities owned by the undersigned shall remain subject to the restrictions contained in this lock-up agreement. For purposes of clause (j) above, “change of control” shall mean the consummation of any bona fide third party tender offer, merger, amalgamation, consolidation or other similar transaction the result of which is that any “person” (as defined in Section 13(d)(3) of the Exchange Act), or group of persons, becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 of the Exchange Act) of a majority of total voting power of the voting stock of the Company. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the undersigned’s Lock-Up Securities except in compliance with this lock-up agreement.

Ex B-1

The undersigned agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this lock-up agreement during the period from the date hereof to and including the 34<sup>th</sup> day following the expiration of the Lock-Up Period, the undersigned will give notice thereof to the Company and will not consummate any such transaction or take any such action unless it has received written confirmation from the Company that the Lock-Up Period has expired.

If the undersigned is an officer or director of the Company, (i) the undersigned agrees that the foregoing restrictions shall be equally applicable to any issuer-directed or “friends and family” Securities that the undersigned may purchase in the Public Offering; (ii) the Representative agrees that, at least three (3) business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of Lock-Up Securities, the Representative will notify the Company of the impending release or waiver; and (iii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two (2) business days before the effective date of the release or waiver. Any release or waiver granted by the Representative hereunder to any such officer or director shall only be effective two (2) business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer of Lock-Up Securities not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this lock-up agreement to the extent and for the duration that such terms remain in effect at the time of such transfer.

The undersigned understands that the Company and the Representative are relying upon this lock-up agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this lock-up agreement is irrevocable and shall be binding upon the undersigned’s heirs, legal representatives, successors and assigns.

The undersigned understands that, if the Underwriting Agreement is not executed by October 30, 2021, or if the Underwriting Agreement (other than the provisions

thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Shares to be sold thereunder, then this lock-up agreement shall be void and of no further force or effect.

Ex B-2

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Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Representative.

Very truly yours,

\_\_\_\_\_  
(Name - Please Print)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Signatory, in the case of entities - Please Print)

\_\_\_\_\_  
(Title of Signatory, in the case of entities - Please Print)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Ex B-3

**EXHIBIT C**

**Form of Press Release**

**Harbor Custom Development, Inc.**

**[Date]**

Harbor Custom Development, Inc. (the "Company") announced today that ThinkEquity, a Division of Fordham Financial Management, Inc., acting as representative for the underwriters in the Company's recent public offering of \_\_\_\_\_ shares of the Company's Series A Cumulative Convertible Preferred Stock and \_\_\_\_\_ Common Stock Purchase Warrants, is [waiving] [releasing] a lock-up restriction with respect to \_\_\_\_\_ shares of the Company's common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on \_\_\_\_\_, 20\_\_\_\_, and the shares may be sold on or after such date.

**This press release is not an offer or sale of the securities in the United States or in any other jurisdiction where such offer or sale is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act of 1933, as amended.**

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Ex C-1



**CERTIFICATE OF DESIGNATION**  
**8.0% SERIES A CUMULATIVE CONVERTIBLE PREFERRED STOCK**  
**OF HARBOR CUSTOM DEVELOPMENT, INC.**

The undersigned, Sterling Griffin, does hereby certify:

1. That he is the duly elected and acting President and Chief Executive Officer of Harbor Custom Development, Inc., a Washington corporation (the "Company").
2. That, pursuant to the authority conferred by the Company's Articles of Incorporation, a duly authorized committee of the Company's Board of Directors, at a special meeting held on March 25, 2021, adopted the following resolution creating a series of preferred shares of the Company designated as "8.0% Series A Cumulative Convertible Preferred Stock."

RESOLVED, a series of Preferred Shares, no par value per share, of the Company be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or special rights and qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1 Designation.**

The Board of Directors hereby designates and creates a series of preferred shares to be designated as "8.0% Series A Cumulative Convertible Preferred Stock" (the "Series A Preferred Shares") and fixes the preferences, rights, powers and duties of the holders of the Series A Preferred Shares (the "Series A Preferred Holders") as set forth in this Certificate of Designation. Each Series A Preferred Share shall be identical in all respects to every other Series A Preferred Share, except as to the respective dates from which dividends on the Series A Preferred Shares may begin accruing, to the extent such dates may differ.

**Section 2 Shares.**

The authorized number of Series A Preferred Shares shall be 2,000,000 shares, subject to increase by filing an amendment to this Certificate of Designation with respect to such additional shares. The Company may, without notice to or consent of the holders of the then outstanding Series A Preferred Shares, authorize and issue additional Series A Preferred Shares.

Series A Preferred Shares that are repurchased, converted, or otherwise acquired by the Company shall be cancelled and shall revert to the status of authorized but unissued preferred shares of the Company, undesignated as to series.

**Section 3 Definitions.**

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Articles of Incorporation" means the Articles of Incorporation of the Company, as they may be amended from time to time in a manner consistent with this Certificate of Designation and shall include this Certificate of Designation.

"Attribution Parties" has the meaning set forth in Section 5(a).

"Beneficial Ownership Limitation" has the meaning set forth in Section 5(a).

"Board of Directors" means the board of directors of the Company or, to the extent permitted by the Articles of Incorporation and the WBCA, any authorized committee thereof.

"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 that banks shall not be deemed to be authorized or obligated to be closed due to a "shelter in place," "non-essential employee" or similar closure of physical branch locations at the direction of any governmental authority if such banks' electronic funds transfer systems (including for wire transfers) are open for use by customers on such day.

"Buy-In" has the meaning set forth in Section 5(d).

"Bylaws" means the bylaws of the Company, as they may be amended from time to time.

"Certificate of Designation" means this Certificate of Designation relating to the Series A Preferred Shares, as it may be amended from time to time in a manner consistent with this Certificate of Designation, the Articles of Incorporation, the Bylaws, and the WBCA.

"Change of Control" means an event the result of which is that a Person or group acquires at least 50% voting control of the Company, and neither the Company nor any surviving entity has its common stock listed on a recognized U.S. exchange.

"Change of Control Conversion Right" has the meaning set forth in Section 5(c).

"Change of Control Conversion Right Conversion Date" has the meaning set forth in Section 5(c).

"Change of Control Conversion Shares" has the meaning set forth in Section 5(c).

"Change of Control Notice" has the meaning set forth in Section 9.

"Change of Control Redemption Price" means

- (i) After the Series A Issue Date and prior to and not including June 9, 2022: \$26.63 per share;
- (ii) On or after June 9, 2022 and prior to and not including June 9, 2023: \$25.81 per share; and
- (iii) On or after June 9, 2023: the Series A Liquidation Preference per share.

"Commission" has the meaning set forth in Section 5(a).

“Common Stock” means the common stock of the Company, no par value per share, and any other outstanding class of common stock of the Company.

“Company” has the meaning set forth in the introductory paragraph of this Certificate of Designation.

“Conversion Date” has the meaning set forth in Section 5(d).

“Conversion Price” has the meaning set forth in Section 5(a).

“Conversion Shares” has the meaning set forth in Section 5(d).

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“Current Market Price” per share of Common Stock on any date shall be deemed to be the average of the daily closing prices per share of such Common Stock for the 30 consecutive Trading Days immediately prior to but not including such date on the Nasdaq Capital Market (or such other exchange or automated quotation system on which the Company’s securities may be listed or quoted).

“Dividend Nonpayment” has the meaning set forth in Section 7(b).

“DWAC” has the meaning set forth in Section 5(a).

“DWAC Delivery” has the meaning set forth in Section 5(a).

“Exempt Issuance” means the issuance of (a) shares of Common Stock or equity awards to employees, officers or directors of the Company pursuant to any stock 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 or exchange of or conversion of any securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date first written above; and (c) shares of Common Stock issued in connection with any contracts, notes or securities outstanding on the date first written above.

“Junior Securities” has the meaning set forth in Section 10(a).

“Liquidation Event” means the occurrence of a liquidation, dissolution, winding up of the affairs of the Company, whether voluntary or involuntary. Neither the sale of all or substantially all of the property or business of the Company nor the consolidation or merger of the Company with or into any other Person, individually or in a series of transactions, shall be deemed a Liquidation Event.

“Liquidation Preference” means, in connection with any distribution in connection with a Liquidation Event pursuant to Section 5(a) of this Certificate of Designation and with respect to any holder of any class or series of capital stock of the Company, the amount otherwise payable to such holder in such distribution with respect to such class or series of capital stock (assuming no limitation on the assets of the Company available for such distribution). For avoidance of doubt, for the foregoing purposes the Series A Liquidation Preference is the Liquidation Preference with respect to the Series A Preferred Shares.

“Market Trigger Conversion” has the meaning set forth in Section 5(b).

“Market Trigger Conversion Date” has the meaning set forth in Section 5(b).

“Market Trigger Conversion Notice” has the meaning set forth in Section 5(b).

“Market Trigger Conversion Shares” has the meaning set forth in Section 5(b).

“Notice of Optional Conversion” has the meaning set forth in Section 5(a).

“Optional Conversion” has the meaning set forth in Section 5(a).

“Optional Conversion Date” has the meaning set forth in Section 5(a).

“Optional Conversion Shares” has the meaning set forth in Section 5(a).

“Parity Securities” has the meaning set forth in Section 10(b).

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“Paying Agent” means Mountain Share Transfer, Inc., acting in its capacity as paying agent for the Series A Preferred Shares, and its successors and assigns, or any other payment agent appointed by the Company.

“Person” means an individual or a corporation, firm, limited liability company, partnership, joint venture, trust, unincorporated organization, association, governmental agency, or political subdivision thereof, or other entity.

“Preferred Shares” means securities of the Company, designated as “Preferred Shares,” including the Series A Preferred Shares, which entitle the holder thereof to a preference with respect to dividends, or as to the distribution of assets upon any Liquidation Event, over Common Stock.

“Record Holder” means the Person in whose name Series A Preferred Shares are registered on the books of the Transfer Agent as of, unless otherwise set forth in this Certificate of Designation, the opening of business on a particular Business Day.

“Senior Securities” has the meaning set forth in Section 10(c).

“Series A Dividends” means dividends with respect to the Series A Preferred Shares pursuant to Section 4 of this Certificate of Designation.

“Series A Dividend Payment Date” means the 20<sup>th</sup> day of each calendar month, starting on July 20, 2021.

“Series A Dividend Period” means a period of time from and including the preceding Series A Dividend Payment Date (other than the initial Series A Dividend Period, which shall commence on and include the Series A Issue Date), to but excluding the next Series A Dividend Payment Date for such Series A Dividend Period.

“Series A Dividend Rate” means a rate equal to 8.0% per annum of the Series A Liquidation Preference per Series A Preferred Share.

“Series A Dividend Record Date” has the meaning set forth in Section 4(b).

“Series A Preferred Holder” means a Record Holder of the Series A Preferred Shares.

“Series A Liquidation Preference” means a liquidation preference for each Series A Preferred Share initially equal to \$25.00 per share.

“Series A Issue Date” means the original date of issuance of Series A Preferred Shares, or June 9, 2021.

“Series A Preferred Shares” means Preferred Shares having the designations, preferences, rights, powers, and duties set forth in this Certificate of Designation.

“Series A Redemption Date” has the meaning set forth in Section 8.

“Series A Redemption Notice” has the meaning set forth in Section 8(b).

“Series A Redemption Price” has the meaning set forth in Section 8(a).

“Share Delivery Date” has the meaning set forth in Section 5(d).

“Standard Settlement Period” has the meaning set forth in Section 5(d).

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“Trading Day” has the meaning set forth in Section 5(a).

“Trading Price” has the meaning set forth in Section 5(b).

“Transfer Agent” means Mountain Share Transfer, Inc., acting in its capacity as registrar and transfer agent for the Series A Preferred Shares, and its successors and assigns or any other bank, trust company, or other Person as shall be appointed from time to time by the Company to act as registrar and transfer agent for the Series A Preferred Shares.

“WBCA” means the Washington Business Corporations Act.

#### **Section 4 Dividends.**

(a) Dividends on each Series A Preferred Share (the “Series A Dividends”) shall be cumulative and shall accrue at the Series A Dividend Rate from and including the Series A Issue Date (or, for any subsequently issued and newly outstanding Series A Preferred Shares, from the Series A Dividend Payment Date immediately preceding the issuance date of such Series A Preferred Shares) until such time as the Company pays the Series A Dividend or redeems the Series A Preferred Shares in full in accordance with Section 8 below, or the Series A Preferred Shares are converted, fully or partially, pursuant to Section 5; whether or not such Series A Dividends shall have been declared and whether or not there are profits, surplus, or other funds legally available for the payment of dividends. Series A Preferred Holders shall be entitled to receive Series A Dividends from time to time out of any assets of the Company legally available for the payment of dividends at the Series A Dividend Rate per Series A Preferred Share, when, as, and if declared by the Board of Directors. Dividends, to the extent declared by the Company to be paid by the Company in accordance with this Section 4, shall be paid monthly on each Series A Dividend Payment Date. Dividends shall accumulate in each Series A Dividend Period from and including the preceding Series A Dividend Payment Date (other than the initial Series A Dividend Period, which shall commence on and include the Series A Issue Date), to but excluding the next Series A Dividend Payment Date for such Series A Dividend Period. If any Series A Dividend Payment Date otherwise would fall on a day that is not a Business Day, declared Series A Dividends may be paid on the next succeeding Business Day with the same force and effect as if paid on such Series A Dividend Payment Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Series A Dividend Payment Date to such next succeeding Business Day. Series A Dividends on the Series A Preferred Shares shall be payable based on a 360-day year consisting of twelve 30-day months.

(b) Not later than 5:00 p.m., Pacific Standard Time, on each Series A Dividend Payment Date, the Company shall pay those Series A Dividends, if any, that shall have been declared by the Board of Directors to the Paying Agent or, if there is no Paying Agent at the relevant time, to the Series A Preferred Holders as such Series A Preferred Holders’ names appear on the Company’s share transfer books maintained by the Transfer Agent on the record date. The applicable record date for any Series A Dividend payment shall be the fifth Business Day immediately preceding the applicable Series A Dividend Payment Date, or such other date as may be designated by the Board of Directors or an officer of the Company authorized by the Board of Directors that is not more than 60 days prior to such Series A Dividend Payment Date (the “Series A Dividend Record Date”).

No dividend shall be declared or paid or set apart for payment on any Junior Securities (other than a dividend payable solely in Junior Securities) unless full cumulative Series A Dividends have been or contemporaneously are being paid or declared and set aside for payment on all outstanding Series A Preferred Shares and any Parity Securities through the most recent respective Series A Dividend Payment Dates.

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Accumulated Series A Dividends in arrears for any past Series A Dividend Period may be declared by the Board of Directors and paid on any date fixed by the Board of Directors, whether or not a Series A Dividend Payment Date, to Series A Preferred Holders on the record date for such payment, which may not be more than 60 days before such payment date. Subject to the next succeeding sentence, if all accumulated Series A Dividends in arrears on all outstanding Series A Preferred Shares and any Parity Securities shall not have been declared and paid, or if sufficient funds for the payment thereof shall not have been declared and set apart, payment of accumulated dividends in arrears on the Series A Preferred Shares and any such Parity Securities shall be made in order of their respective dividend payment dates, commencing with the oldest. If less than all dividends payable with respect to all Series A Preferred Shares and any Parity Securities are paid, any partial payment shall be made pro rata with respect to the Series A Preferred Shares and any Parity Securities entitled to a dividend payment at such time in proportion to the aggregate dividend amounts remaining due in respect of such shares at such time. Series A Preferred Holders shall not be entitled to any dividend, whether payable in cash, property, or shares in excess of full cumulative Series A Dividends. No interest or sum of money in lieu of interest shall be payable in respect of any dividend payment which may be in arrears on the Series A Preferred Shares. Declared Series A Dividends shall be paid to the Paying Agent in same-day funds on each Series A Dividend Payment Date. The Paying Agent shall be responsible for holding or disbursing such payments to Series A Preferred Holders in accordance with the instructions of such Series A Preferred Holders. In certain circumstances, dividends may be paid by check mailed to the registered address of the Series A Preferred Holder, unless, in any particular case, the Company elects to pay by wire transfer.

#### **Section 5 Conversion.**

(a) *Conversion at Option of Holder.*

(i) Each Series A Preferred Share, together with accrued but unpaid Dividends, shall be convertible, at any time and from time to time from and after the issuance date, at the option of the Holder thereof into Common Stock determined by dividing the Series A Liquidation Preference plus all accrued and unpaid dividends by the Conversion Price then in effect. The initial conversion price (the “Conversion Price”) shall be \$4.50 per share (the “Conversion Price”) which initially equals 5.556 shares of Common Stock for each Series A

Preferred Share. The Conversion Price shall be subject to adjustment as set forth in Sections 5(a)(ii)-(iv) hereof. Holders shall effect conversions (the “Optional Conversion”) by providing the Company with the form of conversion notice attached hereto as Annex A (a “Notice of Optional Conversion”) duly completed and executed. Other than a conversion following a Change of Control Notice, the Notice of Optional Conversion must specify the number of Series A Preferred Shares then held by the Holder and the number of such shares which the Holder is converting (the “Optional Conversion Shares”). Provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer program, the Notice of Optional Conversion may specify, at the Holder’s election, whether the applicable Conversion Shares shall be credited to the account of the Holder’s prime broker with DTC through its Deposit Withdrawal Agent Commission (“DWAC”) system (a “DWAC Delivery”). The “Optional Conversion Date,” or the date on which an conversion shall be deemed effective, shall be defined as the Trading Day that the Notice of Optional Conversion, completed and executed, is sent by facsimile or other electronic transmission to, and received during regular business hours by, the Company; *provided* that the original certificate(s) (if applicable) representing such Series A Preferred Shares being converted, duly endorsed, and the accompanying Notice of Optional Conversion, are received by the Company within two Trading Days thereafter. In all other cases, the Optional Conversion Date shall be defined as the Trading Day on which the original share certificate(s) (if applicable) of Series A Preferred Shares being converted, duly endorsed, and the accompanying Notice of Optional Conversion, are received by the Company. The calculations set forth in the Notice of Optional Conversion shall control in the absence of manifest or mathematical error. “Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the “Trading Market” which means the Nasdaq Capital Market or any successor exchange to the foregoing, or any market on which the Common Stock is listed or admitted to trading (including any over-the-counter market).

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(ii) If the Company, at any time while the Series A Preferred Shares are outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of the Series A Preferred Shares) with respect to the then outstanding shares of Common Stock; (B) subdivides outstanding shares of Common Stock into a larger number of shares; or (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, then, in each case, 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 (excluding any treasury shares of the Company). Any adjustment made pursuant to this Section 5(a)(ii) 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 or combination. All calculations under this Section 5(a)(ii) 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(a)(ii), 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. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5(a)(ii), the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment; *provided* however, that the Company may satisfy this notice requirement by filing such notice with the Commission pursuant to a Current Report on Form 8-K, or, to the extent that the Company is no longer subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”), by posting such notice on the Company’s website.

(iii) If the Company, at any time while the Series A Preferred Shares are outstanding, fixes a record date for the issuance of rights or warrants to all holders of Common Stock entitling them to subscribe for or purchase (for a period expiring within 45 calendar days after such record date) Common Stock at a price per share of Common Stock less than the Current Market Price per share of Common Stock on such record date, the Conversion Price to be in effect after such record date shall be adjusted to match such price. Such adjustment shall be made successively whenever such a record date is fixed, and in the event that such rights or warrants are not so issued, the Conversion Price shall be adjusted to be the Conversion Price which would then be in effect if such record date had not been fixed.

(iv) If the Company, at any time while the Series A Preferred Shares are outstanding, fixes a record date for a distribution to all holders of Common Stock of any shares of stock (excluding common stock), evidence of indebtedness or assets (including securities, but excluding those dividends, rights, warrants and distributions referred to in Sections 5(a)(ii) and (iii) above and excluding dividends and distributions paid in cash), each 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 its Series A Preferred Shares immediately before the date on which a record is taken for such distribution.

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(v) 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 of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights; (D) the approval of any 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 filed *at* each office or agency maintained for the purpose of conversion of this Series A Preferred Share, and, except if such notice and the contents thereof shall be deemed to constitute material non-public information, shall cause to be delivered to *each* Holder at its last address as it shall appear upon the stock books of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of 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 Common Stock of record shall be entitled to exchange their shares of the 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.

(vi) Notwithstanding anything herein to the contrary, the Company shall not effect any Optional Conversion of the Series A Preferred Shares, and a Holder shall not have the right to convert any portion of the Series A Preferred Shares, to the extent that, after giving effect to an attempted conversion set forth on an applicable Notice of Optional Conversion, such Holder (together with such Holder’s affiliates (as that term is defined in Rule 405 of the Securities Act of 1933, as amended), and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder’s for purposes of Section 13(d) or Section 16 of the Exchange Act and the applicable regulations of the U.S. Securities and Exchange Commission (the “Commission”), including any “group” of which the Holder is a member (the foregoing, “Attribution Parties”)) would beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder and its Attribution Parties shall include the number of shares of Common Stock held by such Holder and its Attribution Parties plus the number of shares of Common Stock issuable upon Optional Conversion subject to the Notice of Optional Conversion with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining unconverted Series A Preferred Shares beneficially owned by such Holder or any of its Attribution Parties; and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including any warrants) beneficially owned by such Holder or any of its Attribution Parties that, in the case of both (A) and (B), are subject to a limitation on conversion or exercise similar to the limitation contained herein. For purposes of this Section 5(a)(vi), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, “group” has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission. For purposes of this Section 5(a)(vi) in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (A) the Company’s most recent periodic or annual filing with the Commission, as the case may be; (B) a more recent public announcement by the Company that is filed with the Commission; or (C) a more recent notice by the Company or the Transfer Agent to the Holder setting forth the number of shares of Common Stock then outstanding. Upon the written request of a Holder (which may be by email), the Company shall, within three Trading Days thereof, confirm in writing to such Holder (which may be via email) 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 any actual conversion or exercise of securities of the Company, including Series A Preferred Shares, by such Holder or its Attribution Parties since

the date as of which such number of outstanding shares of Common Stock was last publicly reported or confirmed to the Holder. The “Beneficial Ownership Limitation” shall initially be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock pursuant to such Notice of Optional Conversion (to the extent permitted pursuant to this Section 5(a)(vi)), or 4.99% upon election by the Holder at the time of the purchase of the Series A Preferred Shares. Notwithstanding the foregoing, by written notice to the Company, which will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company, the Holder may reset the Beneficial Ownership Limitation percentage to a higher or lower percentage, or if such notice is given upon initial issuance of the Series A Preferred Shares to the Holder, then the reset Beneficial Ownership Limitation shall be effective immediately. Upon such a change by a Holder of the Beneficial Ownership Limitation, the Beneficial Ownership Limitation may not be further amended by such Holder without first providing the minimum 60-day notice required by this Section 5(a)(vi). The Company shall be entitled to rely on representations made to it by the Holder in any Notice of Optional Conversion regarding its Beneficial Ownership Limitation, and the determination as to whether the Series A Preferred Share is convertible and of which portion of the Series A Preferred Share is convertible shall be made in the sole discretion of the Holder and the Company shall have no obligation to verify or confirm the accuracy of such determination.

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(vii) Notwithstanding the foregoing, an Exempt Issuance shall not result in an adjustment of the Conversion Price.

(b) *Market Trigger Conversion.*

(i) The Company may, at its option, cause the Series A Preferred Shares, together with accrued but unpaid dividends, to be converted (the “Market Trigger Conversion”), in whole or in part, on a pro rata basis, into fully paid and nonassessable shares of Common Stock at the Conversion Price if the Trading Price of the Common Stock shall have equaled or exceeded 170% of the Conversion Price for at least 20 Trading Days in any 30 consecutive Trading Day period ending five Trading Days prior to the date of Market Trigger Conversion Date (has defined hereafter). “Trading Price” of the Common Stock shall mean on any Trading Day (excluding any after-hours trading as of such date): (A) the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and ask prices, regular way, in either case as reported by the principal consolidated transaction reporting system with respect to the Common Stock listed or admitted to trading or quoted on the Nasdaq Capital Market, or if the Common Stock is not listed or admitted to trading or quoted on the Nasdaq Capital Market, as reported in the principal consolidated transaction reporting system with respect to the Common Stock listed on the principal national securities exchange or national securities market on or in which the Common Stock is listed or admitted to trading; (B) if the Common Stock is not listed, admitted to trading, or quoted on the Nasdaq Capital Market or a national securities exchange or national securities market on that date, the last price quoted by OTC Market Group Inc. for the Common Stock on the date, or if OTC Market Group Inc. is not quoting such price, a similar quotation service selected by the Company; (C) if the Common Stock is not so quoted, the average mid-point of the last bid and ask prices for the Common Stock on that date from at least two dealers recognized as market-makers for the Common Stock selected by the Company for this purpose; or (D) if the Common Stock is not so quoted, the average of the last bid and ask prices for the Common Stock on that date from a dealer engaged in the trading of the Common Stock selected by the Company for such purpose.

(ii) No greater than 60 nor fewer than 20 days prior to the date of any such Market Trigger Conversion, notice (the “Market Trigger Conversion Notice”) shall be given to the Holders of record of the Series A Preferred Shares to be converted, by first class mail, postage prepaid, and addressed to such Holders at their last addresses as shown on the Company’s stock transfer books. The Market Trigger Conversion Notice shall specify the date fixed for conversion (the “Market Trigger Conversion Date”), the place or places for surrender of Series A Preferred Shares if such shares are held in certificated form, and the then effective Conversion Price.

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(iii) Any outstanding Series A Preferred Shares subject to the Market Trigger Conversion Notice, together with accrued but unpaid dividends, will automatically convert into shares of Common Stock on the Market Trigger Conversion Date. The Holders entitled to receive the shares of Common Stock issuable upon the Market Trigger (the “Market Trigger Conversion Shares”) will be treated as the record holder(s) of such shares as of 5:00 p.m. Pacific Standard Time, on the Market Trigger Conversion Date. Prior to 5:00 p.m. Pacific Standard Time, on the Market Trigger Conversion Date, the Market Trigger Conversion Shares will not be outstanding for any purpose and Holders will have no rights with respect to such Market Trigger Conversion Shares, including voting rights, rights to respond to tender offers and rights to receive any dividends or other distributions on the Common Stock, by virtue of holding the Series A Preferred Shares.

(c) *Change of Control Conversion Right.* Upon the Holder’s receipt of a Change of Control Notice until the Trading Day ending three Trading Days prior to the Change of Control Redemption Date (the “Change of Control Conversion Right Conversion Date”), the Holder of Series A Preferred Shares will have the right to convert some or all of the Series A Preferred Shares held by such Holder, together with accrued but unpaid dividends on those shares (the “Change of Control Conversion Right”) into shares of Common Stock at the Conversion Price (the “Change of Control Conversion Shares”). In the event of a Change of Control, any Series A Preferred Shares not converted pursuant to the Change of Control Conversion Right prior to the Change of Control Redemption Date will be subject to the Change of Control Redemption set forth in Section 9 hereof.

(d) *Additional Conversion Matters.*

(i) *Delivery of Certificate or Electronic Issuance Upon Conversion.* Not later than the earlier of (i) two Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (the “Share Delivery Date”) after either the Optional Conversion Date, the Market Trigger Conversion Date, or the Change of Control Conversion Right Conversion Date (collectively, the “Conversion Date”), the Company shall (A) deliver, or cause to be delivered, to the converting Holder a physical certificate or certificates representing the number of either Optional Conversion Shares or Market Trigger Conversion Shares or the Change of Control Conversion Shares (collectively, the “Conversion Shares”) being acquired upon the conversion of Series A Preferred Shares or (B) in the case of a DWAC Delivery, electronically transfer such Conversion Shares by crediting the account of the Holder’s prime broker with DTC through its DWAC system. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Trading Market. If, in the case of any Notice of Optional Conversion, such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable Holder by the Share Delivery Date, the applicable Holder shall be entitled to elect to rescind such Notice of Optional Conversion by written notice to the Company at any time on or before its receipt of such certificate or certificates for Optional Conversion Shares or electronic receipt of such shares, as applicable, in which event the Company shall promptly return to such Holder any original Series A Preferred Share certificate delivered to the Company and the Holder shall promptly return to the Company any Common Stock certificates or otherwise direct the return of any shares of Common Stock delivered to the Holder through the DWAC system, representing the Series A Preferred Shares unsuccessfully tendered for conversion to the Company. No ink-original Notice of Optional Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Optional Conversion form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender an original certificate(s) representing such Series A Preferred Shares being converted to the Company until the Holder has converted all of the Conversion Shares available thereunder and the Series A Preferred Shares being converted in full, in which case, the Holder shall surrender such original certificate(s) representing such Series A Preferred Shares being converted for cancellation within three Trading Days of the date the final Notice of Optional Conversion is delivered to the Company. Partial conversion of a certificate representing Series A Preferred Shares shall have the effect of lowering the outstanding number of Conversion Shares convertible thereunder in an amount equal to the applicable number of Conversion Shares issued upon conversion, and lowering the amount of Series A Preferred Shares represented by the certificate Holder by the amount of Series A Preferred Shares converted.

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(ii) *Obligation Absolute.* Subject to Holder’s right to rescind a Notice of Optional Conversion pursuant to Section 5(d)(i) hereof, the Company’s obligation to issue and deliver the Conversion Shares upon conversion of Series A Preferred Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any

setoff, counterclaim, recoupment, limitation, or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares.

(iii) *Liquidated Damages; Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion.* If the Company fails to deliver to a Holder such Conversion Shares pursuant to Section 5(d)(i) by the Share Delivery Date applicable to such conversion, the Company shall pay to Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 portion of the total purchase price (rounded down for any portion \$4,999 and under) of Series A Preferred Shares being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. If the Company fails to deliver to a Holder the applicable certificate or certificates or to effect a DWAC Delivery, as applicable, by the Share Delivery Date pursuant to Section 5(d)(i) (other than a failure caused by incorrect or incomplete information provided by Holder to the Company), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such 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 such Holder (in addition to any other remedies available to or elected by such Holder) the amount by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of shares of Common Stock that the Company was required to deliver to the Holder in connection with the conversion at issue, times (2) the price at which the sell order giving rise to such purchase obligation was executed; *provided, however*, that such Holder provides reasonable evidence of the date and time of such sell order and such sell order occurred after the date on which the Company was obligated to deliver such shares of Common Stock and prior to the delivery of the shares of Common Stock related to such conversion; and (B) at the option of the holder, either reissue (if surrendered) the Series A Preferred Shares equal to the number of Series A Preferred Shares submitted for conversion 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 5(d)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of Series A Preferred Shares with respect to which the actual sale price (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 such Holder \$1,000. The Holder shall provide the Company written notice, within three Trading Days after the occurrence of a Buy-In, indicating the amounts payable to such Holder in respect of such Buy-In together with applicable confirmations and other evidence reasonably requested by the Company. 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 certificates representing shares of Common Stock upon conversion of the Series A Preferred Shares as required pursuant to the terms hereof; *provided, however*, that the Holder shall not be entitled to both (i) require the reissuance of the Series A Preferred Shares submitted for conversion for which such conversion was not timely honored and (ii) receive the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 5(d)(i).

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(iv) *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 shares of Common Stock for the sole purpose of issuance upon conversion of the Series A Preferred Shares, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A Preferred Shares, not less than such aggregate number of shares of Common Stock as shall be issuable upon the conversion of all outstanding shares of Series A Preferred Shares and that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid, nonassessable, and free and clear of all liens and other encumbrances.

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

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

(v) *Status as Shareholder.* Upon each Conversion Date, (A) the Series A Preferred Shares being converted shall be deemed converted into shares of Common Stock and (B) the Holder's rights as a holder of such converted Series A Preferred Shares shall cease and terminate, excepting only the right to receive certificates for such shares of Common Stock and to any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Company to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Company's failure to convert Series A Preferred Shares.

(vi) *Dividends.* If the Holder converts any Series A Preferred Shares and if the Conversion Date occurs after a Dividend Record Date and on or prior to the related Dividend Payment Date, the dividend payable on such Dividend Payment Date with respect to such shares so converted shall be payable on such Dividend Payment Date to the Holders of record at the close of business on such Dividend Record Date, and shall not be converted into shares of Common Stock as part of the Conversion Price for such shares.

## **Section 6 Liquidation Rights.**

(a) Upon the occurrence of any Liquidation Event, Series A Preferred Holders shall be entitled to receive out of the assets of the Company or proceeds thereof legally available for distribution to stockholders of the Company, (i) after satisfaction of all liabilities, if any, to creditors of the Company; (ii) after all applicable distributions of such assets or proceeds being made to or set aside for the holders of any Senior Securities then outstanding in respect of such Liquidation Event; (iii) concurrently with any applicable distributions of such assets or proceeds being made to or set aside for holders of any Parity Securities then outstanding in respect of such Liquidation Event; and (iv) before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other classes or series of Junior Securities as to such distribution, a liquidating distribution or payment in full redemption of such Series A Preferred Shares in an amount equal to the Series A Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon (whether or not such dividends have been declared).

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For purposes of clarity, upon the occurrence of any Liquidation Event, (x) the holders of then outstanding Senior Securities shall be entitled to receive the applicable Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon (whether or not such dividends shall have been declared), on such Senior Securities before any distribution shall be made to the Series A Preferred Holders or any Parity Securities and (y) the Series A Preferred Holders shall be entitled to the Series A Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon (whether or not such dividends shall have been declared), per Series A Preferred Share in cash concurrently with any distribution made to the holders of Parity Securities and before any distribution shall be made to the holders of Common Stock or any other Junior Securities. Series A Preferred Holders shall not be entitled to any other amounts from the Company, in their capacity as Series A Preferred Holders, after they have received the Series A Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon (whether or not such dividends shall have been declared). The payment of the Series A Liquidation Preference shall be a payment in redemption of the Series A Preferred Shares such that, from and after payment of the full Series A Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon (whether or not such dividends shall have been declared), any such Series A Preferred Share shall thereafter be cancelled and no longer be outstanding.

(b) In the event of any distribution or payment described in Section 6(a) above where the Company's assets available for distribution to holders of the outstanding Series A Preferred Shares and any Parity Securities are insufficient to satisfy the applicable Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon

(whether or not such dividends shall have been declared), for such Series A Preferred Shares and Parity Securities, the Company's then remaining assets or proceeds thereof legally available for distribution to shareholders of the Company shall be distributed among the holders of outstanding Series A Preferred Shares and such Parity Securities, as applicable, ratably on the basis of their relative aggregate Liquidation Preferences, plus the amount of any accumulated and unpaid dividends thereon (whether or not such dividends shall have been declared).

(c) After payment of the applicable Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon (whether or not such dividends shall have been declared) to the holders of the outstanding Series A Preferred Shares and any Parity Securities, the Company's remaining assets and funds shall be distributed among the holders of the Common Stock and any other Junior Securities then outstanding according to their respective rights and preferences.

#### **Section 7 Voting Rights.**

(a) Notwithstanding anything to the contrary in this Certificate of Designation, the Series A Preferred Shares shall have no voting rights except as set forth in this Section 7 or as otherwise provided by the WBCA.

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(b) In the event that 18monthly Series A Dividends are in arrears, whether or not consecutive (and whether or not such dividends shall have been declared and whether or not there are profits, surplus, or other funds legally available for the payment of dividends) (a "Dividend Nonpayment"), then the authorized number of directors on the Board of Directors shall, at the next annual meeting of shareholders or at a special meeting of shareholders as provided below, automatically be increased by one and the Series A Preferred Holders, voting together as a single class, shall be entitled, at the Company's next annual meeting of shareholders or at a special meeting of shareholders as provided below, to vote for the election of one additional member of the Board of Directors (the "Preferred Share Director"); *provided* that (i) any Preferred Share Director shall be reasonably acceptable to the Board of Directors and the Nominating and Corporate Governance Committee thereof, acting in good faith; (ii) the election of any such Preferred Share Director will not cause the Company to violate the corporate governance requirements of the Nasdaq Capital Market (or such other exchange or automated quotation system on which the Company's securities may be listed or quoted); and (iii) the Preferred Share Director shall not be a person that is subject to any "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act of 1933, as amended, except for a Disqualifying Event covered by Rule 506(d)(2) or (d)(3).

In the event of a Dividend Nonpayment, the holders of at least 50% of the outstanding Series A Preferred Shares may request that the Board of Directors call a special meeting of shareholders to elect such Preferred Share Director; *provided, however*, that, to the extent permitted by the Company's Bylaws in effect from time to time, if the next annual or special meeting of shareholders is scheduled to be held within 90 days after the receipt of such request, the election of such Preferred Share Director shall be included in the agenda for, and shall be held at, such scheduled annual or special meeting of shareholders. The Preferred Share Director shall stand for reelection annually, at each subsequent annual meeting of shareholders, so long as the Series A Preferred Holders continue to have such voting rights. At any meeting at which the holders of Series A Preferred Shares are entitled to elect a Preferred Share Director, the holders of record of at least one-third of the then outstanding Series A Preferred Shares, present in person or represented by proxy, shall constitute a quorum and the vote of the holders of record of a majority of such Series A Preferred Shares so present or represented by proxy shall be sufficient to elect the Preferred Share Director.

If and when all dividends accumulated and in arrears on the Series A Preferred Shares have been paid in full or sufficient funds for such payment have been declared and set apart for such purpose (a "Nonpayment Remedy"), the holders of Series A Preferred Shares shall immediately, and without any further action by the Company, be divested of the voting rights described in this Section 7(b), subject to the revesting of such right as set forth in this Section 7 in the event of a subsequent Dividend Nonpayment and, with respect to funds set apart for payment, upon failure to pay the dividend on the Series A Dividend Payment Date. Upon any termination of the right of the holders of Series A Preferred Shares to vote as a class for a Preferred Share Director, the term of office of the Preferred Share Director then in office elected by such Series A Preferred Holders voting as a class shall terminate at the next annual meeting of shareholders following the date of the Nonpayment Remedy or his or her earlier death, resignation, or removal and the authorized number of directors on the Board of Directors shall automatically decrease by one.

The Preferred Share Director may be removed at any time, with or without cause, by the holders of a majority of the then outstanding Series A Preferred Shares when they have the voting rights described in this Section 7(b). In the event that a Dividend Nonpayment shall have occurred and there shall not have been a Nonpayment Remedy, any vacancy in the office of a Preferred Share Director (other than prior to the initial election of the Preferred Share Director after a Dividend Nonpayment) may be filled by a vote of the holders of a majority of the then outstanding Series A Preferred Shares when they have the voting rights described above; *provided* that (i) any Preferred Share Director shall be reasonably acceptable to the Board of Directors and the Nominating and Corporate Governance Committee thereof, acting in good faith; (ii) that the election of any such Preferred Share Director to fill such vacancy will not cause the Company to violate the corporate governance requirements of the Nasdaq Capital Market (or any other exchange or automated quotation system on which the Company's securities may be listed or quoted); and (iii) the Preferred Share Director shall not be a person that is subject to any "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act of 1933, as amended, except for a Disqualifying Event covered by Rule 506(d)(2) or (d)(3). The Preferred Share Director shall each be entitled to one vote on any matter that may come before the Board of Directors for a vote.

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(c) Unless the Company shall have received the affirmative vote or consent of the holders of a majority of the outstanding Series A Preferred Shares, voting as a single class, the Company shall not (A) adopt any amendment to the Articles of Incorporation or this Certificate of Designation that materially and adversely alters the preferences, powers or rights of the Series A Preferred Shares; (B) declare or pay any dividends on or repurchase any Junior Securities during any time that all declared dividends on the Series A Preferred Shares have not been paid in full; or (C) engage in a merger, consolidation, or share exchange that materially and adversely affects the rights, preferences or voting power of the Series A Preferred Shares, unless such Series A Preferred Shares are converted into or exchanged for (x) cash equal to or greater than the applicable redemption price per share, or (y) preferred shares of the surviving entity having rights, preferences, or privileges that are materially the same as those of the Series A Preferred Shares. For the avoidance of doubt, so long as such action does not materially and adversely affect the preferences, powers, or rights of the Series A Preferred Shares, the Company may amend, alter, or repeal any terms of this Certificate of Designation.

In addition, unless the Company shall have received the affirmative vote or consent of the holders of at least two-thirds of the outstanding Series A Preferred Shares, voting as a separate class, the Company shall not create or issue any Senior Securities.

(d) On any matter described in this Section 7 on which the Series A Preferred Holders are entitled to vote as a class, such Series A Preferred Holders shall be entitled to one vote per Series A Preferred Share and the holders of record of at least one-third of the then outstanding Series A Preferred Shares, present in person or represented by proxy, shall constitute a quorum for purposes of the matters on which such holders are entitled to vote separately as a class. Any Series A Preferred Shares held by the Company or any of its subsidiaries shall not be entitled to vote.

(e) No vote or consent of Series A Preferred Holders shall be required for (i) the creation or incurrence of any indebtedness; (ii) the authorization or issuance of any Common Stock or other Junior Securities; or (iii) except as expressly provided in paragraph (c) above, the authorization or issuance of any Preferred Shares of the Company.

#### **Section 8 Optional Redemption.**

The Company shall have the right at any time, and from time to time, on or after June 9, 2024, to redeem, at its option, in whole or in part, the Series A Preferred Shares. Any such optional redemption shall be effected only out of funds legally available for such purpose. The Company may undertake multiple partial redemptions. Subject to limitations contained in the first sentence of this paragraph and the next sentence in this paragraph, any redemption of the Series A Preferred Shares shall occur on a date set by the Company (the "Series A Redemption Date").

(a) The Company shall effect any such redemption by paying cash for each Series A Preferred Share to be redeemed equal to the Series A Liquidation Preference, plus the amount of any accumulated and unpaid dividends thereon to but not including the date of redemption (whether or not such dividends shall have been declared), for such Series A Preferred Shares on such Series A Redemption Date (the “Series A Redemption Price”). The Series A Redemption Price shall be paid by the Paying Agent to the Series A Preferred Holders on the Series A Redemption Date.

(b) The Company shall give notice of any redemption not more than 60 days before the scheduled Series A Redemption Date, to the Series A Preferred Holders of any Series A Preferred Shares to be redeemed as such Series A Preferred Holders’ names appear on the Company’s share transfer books maintained by the Transfer Agent at the address of such Series A Preferred Holders shown therein. Such notice (the “Series A Redemption Notice”) shall state: (1) the Series A Redemption Date; (2) the number of Series A Preferred Shares to be redeemed and, if less than all outstanding shares of Series A Preferred Shares are to be redeemed, the number (and the identification) of shares to be redeemed from such Series A Preferred Holder; (3) the Series A Redemption Price; (4) the place where the Series A Preferred Shares are to be redeemed and shall be presented and surrendered for payment of the Series A Redemption Price therefor; and (5) that dividends on the Series A Preferred Shares to be redeemed shall cease to accumulate from and after such Series A Redemption Date.

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(c) If the Company elects to redeem less than all of the outstanding shares of Series A Preferred Shares, the number of Series A Preferred Shares to be redeemed shall be determined by the Company, and such Series A Preferred Shares shall be redeemed by such method of selection as the Paying Agent shall determine, either pro rata or by lot, with adjustments to avoid redemption of fractional shares. The Series A Redemption Price will be paid by the Paying Agent to Series A Preferred Holders on the Series A Redemption Date. The aggregate Series A Redemption Price for any such partial redemption of the outstanding Series A Preferred Shares shall be allocated correspondingly among the redeemed shares of Series A Preferred Shares. The Series A Preferred Shares not redeemed shall remain outstanding and entitled to all the rights and preferences provided in this Certificate of Designation (including the Company’s right, if it elects so, to redeem all or part of the Series A Preferred Shares outstanding at any relevant time in accordance with this Section 8 (including this paragraph (c))).

(d) If the Company gives or causes to be given a Series A Redemption Notice, then the Company shall deposit with the Paying Agent funds sufficient to redeem the Series A Preferred Shares as to which such Series A Redemption Notice shall have been given no later than 10:00 a.m., Pacific Standard Time, on the Series A Redemption Date, and shall give the Paying Agent irrevocable instructions and authority to pay the Series A Redemption Price to the Series A Preferred Holders thereof upon surrender or deemed surrender of such Series A Preferred Shares. If the Series A Redemption Notice shall have been given, then from and after the Series A Redemption Date, unless the Company defaults in providing funds sufficient for such redemption at the time and place specified for payment pursuant to the Series A Redemption Notice, all Series A Dividends on such shares shall cease to accumulate and all rights of holders of such Series A Preferred Shares as the Series A Preferred Holders with respect to such Series A Preferred Shares shall cease, except the right to receive the Series A Redemption Price, and such Series A Preferred Shares shall not thereafter be transferred on the books of the Transfer Agent or be deemed to be outstanding for any purpose whatsoever. The Company shall be entitled to receive from the Paying Agent the interest income, if any, earned on such funds deposited with the Paying Agent (to the extent that such interest income is not required to pay the Series A Redemption Price of the shares to be redeemed), and the holders of any Series A Preferred Shares so redeemed shall have no claim to any such interest income. Any funds deposited with the Paying Agent hereunder by the Company for any reason, including, but not limited to, redemption of Series A Preferred Shares, that remain unclaimed or unpaid after two years following the applicable Series A Redemption Date or other payment date, shall be, to the extent permitted by law, promptly repaid to the Company upon its written request, after which repayment the Series A Preferred Holders entitled to such redemption or other payment shall have recourse only to the Company.

(e) Any Series A Preferred Shares that are redeemed or otherwise acquired by the Company shall be automatically canceled and shall constitute Preferred Shares subject to designation by the Board of Directors as set forth in the Articles of Incorporation. If only a portion of the Series A Preferred Shares shall have been called for redemption, upon surrender of any certificate representing Series A Preferred Shares to the Paying Agent, the Paying Agent shall issue to the Series A Preferred Holders a new certificate (or adjust the applicable book-entry account) representing the number of Series A Preferred Shares represented by the surrendered certificate that have not been called for redemption. Notwithstanding any Series A Redemption Notice, there shall be no redemption of any Series A Preferred Shares called for redemption until funds sufficient to pay the full Series A Redemption Price of such shares shall have been deposited by the Company with the Paying Agent.

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(f) The Company and its Affiliates may from time to time purchase Series A Preferred Shares, subject to compliance with all applicable securities and other laws, in open market transactions, privately negotiated transactions, or otherwise. Any Series A Preferred Shares repurchased and canceled by the Company will automatically revert to the status of authorized but unissued Preferred Shares undesignated by the Company.

(g) Notwithstanding anything to the contrary in this Certificate of Designation, the Company shall not (and shall not be required to) redeem, purchase or acquire any Series A Preferred Shares at such time as (i) the terms and provisions of any Senior Securities or any agreement of the Company, including any agreement relating to its indebtedness, prohibit such redemption, repurchase or acquisition, or such redemption, purchase, or acquisition would constitute a breach thereof or a default thereunder, or (ii) such redemption, purchase, or acquisition is restricted or prohibited under the WBCA or other applicable law.

(h) Notwithstanding anything to the contrary in this Certificate of Designation, in the event that full cumulative dividends on the Series A Preferred Shares and any Parity Securities shall not have been paid or declared and set apart for payment, the Company may not repurchase, redeem, or otherwise acquire, (1) any Parity Securities, except pursuant to a purchase or exchange offer made on the same terms to all holders of Series A Preferred Shares and Parity Securities, an exchange for or conversion or reclassification into other Parity Securities or Junior Securities or with proceeds of a substantially contemporaneous sale of Parity Securities or Junior Securities; or (2) any Common Stock and any other Junior Securities, except pursuant to an exchange for or conversion or reclassification into other Junior Securities or with proceeds of a substantially contemporaneous sale of Junior Securities.

#### **Section 9 Change of Control.**

On or before the 20th Business Day prior to the consummation of a Change of Control that has been approved by the Company’s Board of Directors (or, in the case where the consummation of the Change of Control is in less than 20 Business Days, promptly after the Board of Directors approves such transaction that will result in a Change of Control but in any event not prior to the public announcement of the transaction resulting in such Change of Control), the Company shall provide written notice thereof to the Series A Preferred Holders (a “Change of Control Notice”), and in connection with any such Change of Control, each Series A Preferred Holder may elect one of the following options (subject to such Change of Control having actually occurred or actually occurring) by written notice given to the Company within 20 Business Days after the date the Company provides such Change of Control Notice (it being understood that if a Series A Preferred Holder fails to timely provide notice of its election to the Company, such Series A Preferred Holder will be deemed to have elected the option set forth in clause (b) below):

(a) cause the Company to redeem all of such Series A Preferred Holder’s Series A Preferred Shares for cash in an amount per share equal to the Change of Control Redemption Price in effect immediately prior to the consummation of such Change of Control plus the amount of any accumulated and unpaid dividends thereon to but not including the date of redemption (whether or not such dividends shall have been declared), in which case the Company shall redeem such Series A Preferred Shares within 60 calendar days of the Company’s receipt of such Series A Preferred Holder’s notice; *provided, however*, that if, prior to the receipt of such written notice from a holder of Series A Preferred Shares, the Company has provided notice of its election to redeem some or all of the Series A Preferred Shares, such holder of Series A Preferred Shares will not have any right of redemption with respect to the shares called for redemption; or

(b) subject to the Company’s (or, if the Company is not the surviving entity of such Change of Control, the Company’s successor’s) right to redeem the Series A Preferred Shares



**Section 10 Rank.**

The Series A Preferred Shares shall be deemed to rank:

(a) Senior to (i) the Common Stock and (ii) each other class or series of capital stock established after the Series A Issue Date, the terms of which class or series do not expressly provide that it is made senior to or on parity with the Series A Preferred Shares as to the payment of dividends and amounts payable upon any Liquidation Event (collectively referred to with the Common Stock as "Junior Securities");

(b) On a parity with any class or series of capital stock established after the Series A Issue Date with terms expressly providing that such class or series ranks on a parity with the Series A Preferred Shares as to dividends and distributions upon any Liquidation Event (collectively referred to as "Parity Securities"); and

(c) Junior to each other class or series of capital stock made senior to the Series A Preferred Shares as to the payment of dividends and amounts payable upon any Liquidation Event (collectively referred to as "Senior Securities").

The Company may issue Junior Securities and Parity Securities from time to time in one or more classes or series without the consent of the Series A Preferred Holders and, subject to any approvals required by Series A Preferred Holders pursuant to Section 7(c), may issue Senior Securities from time to time in one or more classes or series. The Board of Directors has the authority to determine the preferences, powers, qualifications, limitations, restrictions, and special or relative rights or privileges, if any, of any such class or series before the issuance of any shares of such class or series.

**Section 11 Fractional Shares.**

No Series A Preferred Shares may be issued in fractions of a share. If a fractional share shall result, the number of Series A Preferred Shares shall be rounded up to the nearest whole share.

**Section 12 No Sinking Fund.**

The Series A Preferred Shares shall not have the benefit of any sinking fund.

**Section 13 Record Holders.**

To the fullest extent permitted by applicable law, the Company, the Transfer Agent and the Paying Agent may deem and treat any Series A Preferred Holder as the true, lawful, and absolute owner of the applicable Series A Preferred Shares for all purposes, and neither the Company nor the Transfer Agent or the Paying Agent shall be affected by any notice to the contrary.

**Section 14 Notices.**

All notices or communications in respect of the Series A Preferred Shares shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designation, in the Articles of Incorporation, the Bylaws, or by applicable law.

**Section 15 Other Rights.**

The Series A Preferred Shares shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in this Certificate of Designation, the Articles of Incorporation, the Bylaws, or as provided by applicable law.

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I further declare under penalty of perjury that the matters set forth in this Certificate of Designation are true and correct of my own knowledge.

Executed in the City of Gig Harbor, Washington on June 8, 2021.

*/s/ Sterling Griffin*  
Name: Sterling Griffin  
Title: President and Chief Executive Officer



**Harbor Custom Development, Inc. Announces Pricing of \$30 Million Public Offering  
of Convertible Preferred Shares & Warrants**

**Gig Harbor, Washington, June 9, 2021** – Harbor Custom Development, Inc. (Nasdaq: HCDI) (“Harbor,” “Harbor Custom Homes®,” or the “Company”), an innovative and market leading real estate company involved in all aspects of the land development cycle, today announced the pricing of its underwritten public offering (the “Offering”) of 1,200,000 shares of 8.0% Series A Cumulative Convertible Preferred Stock. Each share of 8.0% Series A Cumulative Convertible Preferred Stock will be accompanied by three warrants (“Warrants”), each Warrant to purchase one share of Common Stock. Each share of Series A Cumulative Convertible Preferred Stock and accompanying three Warrants is being offered at a price of \$25.00. The shares of Series A Preferred Stock and Warrants will be issued separately but can only be purchased together in this Offering. Harbor Custom Homes® has granted the underwriters a 45-day option to purchase up to 180,000 additional Preferred Shares and/or 540,000 additional Warrants solely to cover over-allotments, if any.

Each share of Preferred Stock is convertible into common shares at a conversion price of \$4.50 per common share, or 5.556 common shares, at any time at the option of the holder, subject to certain customary adjustments. The Warrants are exercisable immediately, have an exercise price of \$5.00 per share and expire five years from the date of issuance. If the trading price of Harbor Custom Homes® common stock equals or exceeds \$7.65 per share for at least 20 trading days in any 30 consecutive trading day period, the Company can call for mandatory conversion of the Preferred Stock. Dividends on the Preferred Stock shall be cumulative and paid monthly in arrears starting July 20, 2021, to the extent declared by the board of directors of the Company. The Preferred Stock will not be redeemable for a period of three years from issuance, except upon change of control.

The Offering is expected to close on June 11, 2021, subject to the satisfaction of customary closing conditions. The Preferred Stock and Warrants will begin trading on The Nasdaq Capital Market on June 10, 2021 under the symbols “HCDIP” and “HCDIW,” respectively.

ThinkEquity, a division of Fordham Financial Management, Inc., is acting as sole book-running manager for the Offering.

A registration statement on Form S-1 (File No. 333-255229) relating to the offer and sale of the securities referred to herein was filed by the Company with the Securities and Exchange Commission (“SEC”) under the Securities Act of 1933, as amended (the “Securities Act”), and was declared effective by the SEC on June 8, 2021, and a related registration statement on Form S-1 (File No. 333-256918) was filed pursuant to Rule 462(b) of the Securities Act to increase the size of the Offering set forth in the earlier effective registration statement on Form S-1. This offering is being made only by means of a prospectus. Copies of the final prospectus, when available, may be obtained from ThinkEquity, a division of Fordham Financial Management, Inc., 17 State Street, 22nd Floor, New York, New York 10004, by telephone at (877) 436-3673, by email at [prospectus@think-equity.com](mailto:prospectus@think-equity.com). The final prospectus will be filed with the SEC and will be available on the SEC’s website located at <http://www.sec.gov>.

*The press release shall not constitute an offer to sell or the solicitation of an offer to buy any of the securities described herein, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.*

**About Harbor Custom Development, Inc.**

Harbor Custom Development, Inc. is a real estate development company involved in all aspects of the land development cycle including land acquisition, entitlements, construction of project infrastructure, home building, marketing, sales, and management of various residential projects in Western Washington’s Puget Sound region; Sacramento, California; and Austin, Texas. Harbor has active or recently sold-out residential communities in Gig Harbor, Bremerton, Silverdale, Bainbridge Island, and Allyn in the state of Washington. In addition, Harbor has acquired land and will begin constructing homes in two new markets beginning the second quarter of 2021. In the Sacramento metro market, Harbor will be constructing homes in completed subdivision in both Rocklin and Auburn, California. In the Austin metro market, Harbor has acquired developed lot inventory in Dripping Springs, Driftwood and Horseshoe Bay Texas. Harbor Custom Development’s business strategy is to acquire and develop land strategically, based on an understanding of population growth patterns, entitlement restrictions, infrastructure development, and geo-economic forces. Harbor focuses on real estate within target markets with convenient access to metropolitan areas that are generally characterized by diverse economic and employment bases and increasing populations. For more information on Harbor Custom Development, Inc., please visit [www.harborcustomdev.com](http://www.harborcustomdev.com)

**Forward Looking Statements**

*Certain statements in this press release constitute “forward-looking statements” within the meaning of the federal securities laws. Words such as “may,” “might,” “should,” “believe,” “expect,” “anticipate,” “estimate,” “continue,” “predict,” “forecast,” “project,” “plan,” “intend” or similar expressions, or statements regarding intent, belief, or current expectations, are forward-looking statements. These forward-looking statements are based upon current estimates and assumptions and include statements regarding the completion of the offering and the amount of proceeds. While Harbor Custom Development, Inc. (the “Company”) believes these forward-looking statements are reasonable, undue reliance should not be placed on any such forward-looking statements, which are based on information available to us on the date of this release. These forward-looking statements are subject to various risks and uncertainties, including without limitation those set forth in the Company’s filings with the Securities and Exchange Commission. Thus, actual results could be materially different. The Company expressly disclaims any obligation to update or alter statements whether as a result of new information, future events or otherwise, except as required by law.*

**Investor Relations**

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