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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): January 16, 2024

SPRINGBIG HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware	001-40049	88-2789488
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S Employer Identification No.)

621 NW 53rd Street
Ste. 260
Boca Raton, Florida 33487
(Address of principal executive offices) (zip code)

Registrant's telephone number, including area code: **(800) 972-9172**

Not Applicable
(Former name or former address, if changed since last report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None		

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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

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

Item 1.01 Entry into a Material Definitive Agreement.

Debt Settlement Agreement

As previously reported, in connection with the closing of its business combination on June 14, 2022, SpringBig Holdings, Inc. (the "Company") issued (i) $11.0 million in aggregate principal amount of Senior Secured Original Issue Discount Convertible Notes, due June 14, 2024 (as amended, the "Existing Convertible Notes") and (ii) a warrant representing 586,890 shares (as amended, the "Existing Convertible Warrant") of common stock of the Company, par value $0.0001 per share, in a private placement with the purchaser party to the Existing Convertible Notes, each of which have been subsequently amended prior to the date of this report. On September 5, 2023, the Nasdaq Stock Market LLC filed a Form 25 Notification of Delisting with respect to the Company's common stock and public warrants with the Securities and Exchange Commission (the "Commission"). While delisting was an event of default under the terms of the Existing Convertible Notes, the holder had not exercised its right to accelerate payment.

On January 16, 2024, the Company and L1 Capital Global Opportunities Master Fund, a Cayman Island business organization, which as of that date held the entire amount of the Existing Convertible Notes and the Existing Convertible Warrant (the "Holder"), entered into an agreement to settle the Existing Convertible Notes (the "Debt Settlement Agreement"). Under the Debt Settlement Agreement, the Holder agreed to accept the amount of $2,879,872, plus reimbursement of the Holder's legal fees up to $15,000, in full payment and satisfaction of all of the liabilities, obligations and indebtedness owing by the Company and SpringBig, Inc., as guarantor, to the Holder under the Existing Convertible Notes, the Existing Convertible Warrant and related documents, subject to the terms and conditions set forth therein. The Company intends to pay such amounts from the proceeds of the new financing transaction described under "Convertible Notes and Term Notes" below. In addition, in connection therewith, the Company issued 1,000,000 shares of Common Stock to the Holder, which did not involve any underwriters, underwriting discounts or commissions, or any public offering. The Company completed this issuance in a transaction not requiring registration under Section 5 of the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemption afforded by Section 4(a)(2) thereof.

The foregoing is a summary of certain terms and provisions of the Debt Settlement Agreement and is not complete and is subject to, and qualified in its entirety by the provisions of, the Debt Settlement Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K.

Convertible Notes and Term Notes

On January 23, 2024 (the "Closing Date"), the Company entered into a note purchase agreement (the "Purchase Agreement") to sell up to (i) a total of $6.4 million of 8% Senior Secured Convertible Promissory Notes due 2026 (the "Convertible Notes") and (ii) a total of $1.6 million of 12% Senior Secured Term Promissory Notes due 2026 (the "Term Notes") in a private placement with the purchasers party thereto (the "Purchasers").

The Convertible Notes were issued on the Closing Date and will mature two years after the date of issuance and will be convertible into common stock at the option of the holders at any time prior to the last business day immediately preceding the maturity date at a conversion price of $0.15 per share. Interest of 8% per annum is payable by adding such interest to the outstanding amount owing under the Convertible Notes until the earlier of the date of maturity or conversion.

The Term Notes were also issued on the Closing Date and will also mature two years after the date of issuance. Interest of 12% per annum is payable in cash each six months in arrears.

Proceeds from the issuances of the Convertible Notes and Term Notes will be used to repurchase entirely the Existing Convertible Notes pursuant to the Debt Settlement Agreement and for general corporate purposes. The net proceeds after repurchasing the Existing Convertible Notes and payment of placement agent and commitment fees and other transaction costs is estimated to be $4.6 million.

The issuances of the Convertible Notes and Term Notes did not involve any public offering. The Company completed these issuances in a transaction not requiring registration under Section 5 of the Securities Act, in reliance on the exemption afforded by Section 4(a)(2) thereof and/or Rule 506(b) of Regulation D promulgated thereunder.

The Convertible Notes and Term Notes will be secured against substantially all the assets of the Company and will rank pari passu with each other. Each material subsidiary will guarantee the Convertible Notes and Term Notes.

The terms of the Purchase Agreement, Convertible Notes and Term Notes contain customary representations and warranties, indemnification, and other covenants of the Company and, in the case of the Purchase Agreement, the Purchasers. In addition,

under the Purchase Agreement, the Company is required to at all times reserve and keep available at all times in favor of each Purchaser a number of shares of Common Stock equal to the 150% of the number of shares issuable upon conversion of the Convertible Notes as of the Closing Date. The Convertible Notes include customary anti-dilution provisions.

The following Company executive officers and directors (the “Insider Purchasers”) agreed to purchase Convertible Notes and Term Notes pursuant to the Purchase Agreement on the same terms as all other Purchasers, and such purchases settled on the Closing Date:

Name	Convertible Notes Purchased ($)	Term Notes Purchased ($)	Total ($)
Jeffrey Harris, Chief Executive Officer and Chairman	320,000	80,000	400,000
Paul Sykes, Chief Financial Officer	25,000	6,250	31,250
Jon Trauben, Director	15,000	3,750	18,750

In addition, on the Closing Date, the Company entered into the Registration Rights Agreement with the Purchasers (the “Registration Rights Agreement”), pursuant to which the Company granted the Purchasers certain registration rights in which the Company agreed that, no later than 30 days after the Closing Date, the Company shall prepare and file a registration statement (the “Resale Registration Statement”) with the Commission covering the resale of all of the shares of the Company’s common stock underlying the Convertible Notes. The Company is required to cause such Resale Registration Statement to become effective within 75 days after such filing.

The foregoing is a summary of certain terms and provisions of the Purchase Agreement, the Convertible Notes, the Term Notes and the Registration Rights Agreement and is not complete and is subject to, and qualified in its entirety by the provisions of, such documents, copies of which are filed as Exhibits 10.2, 4.1, 4.2 and 10.3 to this Current Report on Form 8-K, respectively.

Item 2.02 Results of Operations and Financial Condition.

On January 24, 2024, the Company issued a press release (the “Press Release”) announcing selected financial information for the Company’s year ended December 31, 2023. A copy of the Press Release is attached hereto as Exhibit 99.1.

The information in Item 2.02 and in the accompanying Exhibit 99.1 is being furnished and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act, or the Exchange Act, regardless of any general incorporation language in such filing, except as expressly set forth by specific reference in such a filing.

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

The information included in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information included in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 7.01 Regulation FD Disclosure.

The Press Release also announced the issuance of the Convertible Notes and the Term Notes, as well as an updated business outlook for the year ending December 31, 2024. A copy of the Press Release is attached hereto as Exhibit 99.1.

The information in Item 7.01 and in the accompanying Exhibit 99.1 is being furnished and shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, regardless of any general incorporation language in such filing, except as expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
4.1	Senior Secured Convertible Promissory Note of SpringBig Holdings, Inc., dated as of January 23, 2024
4.2	Senior Secured Term Promissory Note of SpringBig Holdings, Inc., dated as of January 23, 2024
10.1	Debt Settlement Agreement, dated as of January 16, 2024, by and among SpringBig Holdings, Inc., SpringBig, Inc. and L1 Capital Global Opportunities Master Fund
10.2	Note Purchase Agreement, dated January 23, 2024, by and among SpringBig Holdings, Inc. and the purchasers party thereto
10.3	Registration Rights Agreement, dated January 23, 2024, by and among SpringBig Holdings, Inc. and the investors party thereto
99.1	Press release issued by SpringBig Holdings, Inc. on January 24, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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

SPRINGBIG HOLDINGS, INC.

January 24, 2024

By: /s/ *Jeffrey Harris*
Name: Jeffrey Harris
Title: Chief Executive Officer

THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS NOTE AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS NOTE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT SECURED BY SUCH SECURITIES. ANY TRANSFEREE OF THIS SECURED CONVERTIBLE PROMISSORY NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS SECURED CONVERTIBLE PROMISSORY NOTE. THE PRINCIPAL AMOUNT REPRESENTED BY THIS SECURED CONVERTIBLE PROMISSORY NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF.

SpringBig Holdings, Inc.

Senior Secured Convertible Promissory Note

Original Issuance Date: January 23, 2024 Principal: $___________

Maturity Date: January 23, 2026

FOR VALUE RECEIVED, SpringBig Holdings, Inc., a Delaware corporation (the "Maker" or the "Company"), hereby promises to pay to ____________________, or registered assigns (the "Holder"), collectively, the principal sum of $_________ (as such amount may be increased from time to time pursuant to Section 1.2 below, the "Principal") pursuant to the terms of this Senior Secured Convertible Promissory Note (this "Note" and together with all other Senior Secured Convertible Promissory Notes issued pursuant to the Purchase Agreement, the "Notes"). For certainty, all amounts referred to in this Note and each other Loan Document are in the currency of the United States of America unless otherwise explicitly stated.

The Maturity Date of this Note shall be 24 months from the Original Issuance Date of this Note, unless the Required Holders have given notice to the Maker that it elects to accelerate the Maturity Date to the extent explicitly permitted by this Note (the "Maturity Date"). The Maturity Date is the date upon which the Obligations shall be due and payable unless prepaid earlier or converted. This Note may not be repaid in whole or in part except as otherwise explicitly set forth herein.

This Note is issued secured by a first lien security interest as evidenced by and to the extent set forth in that certain Pledge and Security Agreement granted by the Maker and the Guarantor,

in favor of Shalcor Management Inc. (the "Lead Investor"), as agent for and on behalf of the Holders dated as of the Original Issuance Date (the "Pledge and Security Agreement").

All payments under or pursuant to this Note shall be made in United States dollars in immediately available funds to the Holders at the addresses of the Holders set forth in the Purchase Agreement (as hereinafter defined) or at such other place as a Holder may designate from time-to-time in writing to the Maker or by wire transfer of funds to a Holder's account designated in writing by such Holder to the Maker.

1.1 Purchase Agreement; Subsidiary Guaranty. This Note has been executed and delivered pursuant to the Note Purchase Agreement, dated as of the Original Issuance Date (as the same may be amended from time to time, the "Purchase Agreement"), by and among the Maker, the Lead Investor and the other Purchasers (as defined therein). Capitalized words and terms used and not otherwise defined herein shall have the meanings set forth for such terms in the Purchase Agreement. The full amount of this Note and all the cash payment obligations of the Company under the Loan Documents shall be guaranteed in full by the Guarantor pursuant to the Guaranty.

1.2 Interest. Interest on this Note shall commence accruing on the Original Issuance Date at 8% per annum (the "Interest") calculated based on the outstanding Obligations, shall be computed on the basis of a 360-day year assuming a 30-day month (i.e. 30/360 basis) and shall be payable by the Company to the Holders. Interest is payable semi-annually in arrears on each January 15 and July 15, commencing on July 15, 2024, to Holders of record at the close of business on the preceding January 1 and July 1 (whether or not such day is a Trading Day), respectively. Interest on this Note shall be payable by increasing the principal amount of the outstanding Note by an amount equal to the amount of Interest for the applicable interest period (rounded up to the nearest $1.00). Following an increase in the principal amount of this Note as a result of an Interest payment, this Note will bear interest on such increased principal amount from and after the date of such Interest payment. Unless the context requires otherwise, references to this Note or the "Principal" or the "Principal amount" of Notes including for any purpose includes any increase in the principal amount of the Notes as a result of an Interest payment.

Notwithstanding any other provision of this Note or any other Loan Document, upon the occurrence of any Default which is continuing, the Borrowers shall pay interest and fees on the Obligations at a rate (payable on Demand as well after as before judgment) equal to the Interest rate then payable in accordance with this Agreement plus 8.0% per annum (such increased rate to be effective on the date of such Default and thereafter until the date such Default has been cured or waived in writing by the Required Holders) which shall compensate the Holders for the additional risk being assumed in connection with the outstanding Obligations during the continuance of such Default.

No Prepayment. The Maker may not prepay any portion of the Principal prior to the Maturity Date.

1.4 Mandatory Repayments.

(a) Proceeds of Debt/Equity Issuance. The Maker shall repay to the Holder the Obligations in an aggregate principal amount equal to 25% of the net cash proceeds of any equity raised from an initial public or private offering undertaken by the Maker (other than an Exempt Issuance, and 100% of the net cash proceeds of any issuance of Indebtedness (other than Permitted Indebtedness) undertaken by the Maker or its Subsidiaries, in each case within three (3) Trading Days after the closing and funding of such equity raise or debt financing.

(b) Asset Sales. The Maker shall repay to the Holder the Obligations in an aggregate principal amount equal to 100% of the net cash proceeds of any asset disposition (other than an asset disposition permitted hereunder) by the Maker or the Guarantor forthwith and no later than ten (10) Trading Days following receipt. Notwithstanding the foregoing, the Maker may retain net cash proceeds from an asset disposition if such cash proceeds are applied within 180 days of their receipt to acquire assets of the type used or useful in the Business, provided that the Maker notifies the Holder of its intentions regarding application of the Cash Proceeds within ten (10) Business Days of their receipt and the Required Holders consent to such application in writing.

(c) Insurance Proceeds. The Maker shall repay to the Holder the Obligation in an aggregate principal amount equal to 100% of the net cash proceeds from any insurance claim (other than liability and business interruption insurance to the extent the business interruption is used to pay salaries or wages) made or settled by the Maker or the Guarantor forthwith and no later than ten (10) Trading Days following receipt by the Maker or the Guarantor, as applicable, unless the insurance proceeds are applied within 180 days of their receipt to acquire assets of the type used or useful in the Business, provided that, the Maker notifies the Holder of their intentions regarding application of the insurance proceeds within ten (10) Business Days of their receipt and the Required Holders consent to such application in writing.

For certainty, any repayment received by the Holders pursuant to this Section shall, unless applied earlier in the sole discretion of the Required Holders, be held in trust by the Holders and applied to payments as and when they come due in accordance with the Pari Passu and Agency Agreement so as not to breach the restriction in Section 1.3 on prepayments. Notwithstanding the foregoing, all amounts received pursuant to this Section 1.4 shall be applied first to Obligations outstanding under the Term Note on a pro-rata basis, and second to obligations outstanding under this Note.

1.5 Payment on Non-Trading Days. For any relevant date other than the Maturity Date, whenever any payment to be made shall be due on a day which is not a Trading Day, any payment due on such date will be postponed to the next day that is a Trading Day unless such payment is to be made in kind and added to the Obligations in accordance with Section 1.2 herein, in which case it will be added to the Obligations on the applicable day, regardless of whether such day is a Trading Day.

1.6 Transfer. Neither the Maker nor the Guarantor may assign any of its rights hereunder or under any other Loan Document without the Holder's prior written consent, given or withheld in the Holder's sole discretion. For greater certainty, the Holder may, subject to applicable laws,

assign all or any portion of its right and obligations under this Note or any of the Loan Documents at any time, upon reasonable prior notice to Maker but without the consent of the Maker or the Guarantor; provided that, unless an Event of Default has occurred and is then continuing, the Holder may not transfer to any Person that is reasonably identified by Maker a competitor of the Maker (or an Affiliate of such competitor).

1.7 Replacement. Upon receipt of a duly executed Affidavit of Loss and Indemnity Agreement in customary form from a Holder with respect to the loss, theft or destruction of this Note (or any replacement hereof), or, in the case of a mutilation of this Note, upon surrender and cancellation of such Note, the Maker shall issue a new Note, of like tenor and amount, in lieu of such lost, stolen, destroyed or mutilated Note.

1.8 Status of Note. The obligations of the Maker under this Note shall rank senior to all other existing Indebtedness and equity of the Company, other than the amounts owed under the Term Notes, to the extent of the first lien security interest in the collateral per the Pledge and Security Agreement. The obligations of the Maker under this Note shall rank *pari passu* with the amounts owed under the Term Notes and to the Holders. Upon any Liquidation Event (as hereinafter defined), the Holders will be entitled to receive, before any distribution or payment is made upon, or set apart with respect to, any Indebtedness of the Maker or any class of capital stock of the Maker, an amount equal to the greater of (i) the outstanding Principal, Interest and any other sums due and (ii) the amount that would have been received by Holders had they converted the Notes into Common Stock immediately prior to such Liquidation Event and participated in distributions payable to the holders of the Common Stock. For purposes of this Note, "Liquidation Event" means (i) a liquidation pursuant to a filing of a petition for bankruptcy under applicable law or any other insolvency or debtor's relief, an assignment for the benefit of creditors, or a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Maker or (ii) a Change of Control transaction.

ARTICLE 2

2.1 Events of Default. An "Event of Default" under this Note shall mean the following (unless the Event of Default is waived in writing by the Required Holders):

(a) Any default in the payment of the Principal when due (whether on the Maturity Date or by acceleration or otherwise);

(b) Following a three Trading Day opportunity to cure, any default in the payment of any Obligations other than the Principal when due (whether on the Maturity Date or by acceleration or otherwise);

(c) Except as otherwise permitted in this Note, the Maker shall fail to observe or perform any other material covenant, condition or agreement contained in this Note or any Loan Document, including, for the avoidance of doubt, the Maker issuing any Indebtedness or the imposition of a Lien upon any of the assets of the Maker or any subsidiary, except for Permitted Indebtedness or Permitted Liens or as otherwise expressly permitted under Article 4; provided that if the Resale Registration Statement is not declared effective by the required effective date

due to factors outside the Maker's control, including due to SEC delays, such failure to meet the required effective date shall not be considered an Event of Default under this Section 2.1;

(d) the Maker or any of its Subsidiaries shall (A) default in any payment of any amount or amounts of principal of or interest (if any) on any Indebtedness (other than Indebtedness under the Notes or the Term Notes), the aggregate principal amount of which Indebtedness is in excess of $100,000 or (B) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Indebtedness to cause with the giving of notice if required, such Indebtedness to become due prior to its stated maturity;

(e) the Maker's notice to the Holders, including by way of public announcement at any time of its inability to comply or its intention not to comply with proper requests for conversion of this Note into Common Stock;

(f) any representation or warranty made by the Maker or any of its Subsidiaries herein or in the Purchase Agreement, this Note or any other Loan Document shall prove to have been false or incorrect or breached in a material respect on the date as of which made;

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

(h) a proceeding or case shall be commenced in respect of the Maker or any of its Subsidiaries, without its application or consent, in any court of competent jurisdiction, seeking: (i) the liquidation, reorganization, moratorium, dissolution, winding up, or composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets in connection with the liquidation or dissolution of the Maker or any of its Subsidiaries; or (iii) similar relief in respect of it under any law providing for the relief of debtors, and such proceeding or case described in clause (i), (ii) or (iii) shall continue undismissed, or unstayed and in effect, for a period of 30 days or any order for relief shall be entered in an involuntary case under United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic) against the Maker or any of its Subsidiaries or action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing shall be

taken with respect to the Maker or any of its Subsidiaries and shall continue undismissed, or unstayed and in effect for a period of 30 days;

(i) one or more final judgments or orders for the payment of money aggregating in excess of $100,000 (or its equivalent in the relevant currency of payment) are rendered against one or more of the Company and/or any of its Subsidiaries, that is not dismissed or stayed within 30 days;

(j) the Maker's Common Stock ceases to be listed or quoted for trading on any Principal Market or a cease trade order is applied to the Maker's Common Stock; or

(k) the occurrence of a Change of Control;

(l) the Maker or the Guarantor ceases to carry on business;

(m) if any security delivered pursuant to this Note or any other Loan Document ceases to be enforceable or any security interest granted thereunder ceases to constitute a valid and effective lien with the priority contemplated hereunder; or the Maker or the Guarantor contests the validity or enforceability thereof or denies it has any further liability or obligation thereunder;

(o) any material insurance policy of the Maker or the Guarantor has lapsed or is not otherwise maintained in accordance with the requirements contained herein; or

(p) the continuance of a default under a Term Note beyond any waiver period, forbearance period or applicable cure periods (including, without limitation, any extensions of such cure periods agreed to in writing by all of the Holders.

2.2 Remedies Upon an Event of Default.

(a) Upon the occurrence of any Event of Default, the Maker shall, immediately notify the Agent of the occurrence of such Event of Default, describing the event or factual situation giving rise to the Event of Default and specifying the relevant subsection or subsections of Section 2.1 hereof under which such Event of Default has occurred.

(b) At any time an Event of Default (other than under Section 2.1(g) or (h)) has occurred and is continuing, the Required Holders may at their option declare, by written notice to the Maker, the entire Principal amount and any other obligations then outstanding to become due and payable, without presentment, demand, protest or other notice of any kind except as set out earlier in this paragraph, all of which are hereby waived by the Maker, and the Holder may take all steps necessary to enforce upon any security granted to the Holder and otherwise avail itself of any and all remedies available to the Holder at law, by contract or in equity.

(c) At any time an Event of Default under Section 2.1(g) or (h) has occurred and is continuing, then immediately and without notice or demand, the entire Principal amount and any other obligations then outstanding to become due and payable, without presentment, demand, protest or other notice of any kind except as set out earlier in this paragraph, all of which are hereby waived by the Maker, and the Holder may take all steps necessary to enforce

upon any security granted to the Holder and otherwise avail itself of any and all remedies available to the Holder at law, by contract or in equity.

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Holder under this Note or under any other Loan Document are cumulative and are in addition to, and not in substitution for, any rights or remedies provided by applicable law or by equity; and any single or partial exercise by the Holder of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Note or other Loan Document by the Maker or the Guarantor shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Holder may be lawfully entitled for such default or breach.

The Holder shall not have any obligation to the Maker, Guarantor or any other person to realize any collateral or enforce any of the Loan Documents or any part thereof or to allow any of the Collateral to be sold, dealt with or otherwise disposed of. The Holder shall not be responsible or liable to the Maker, Guarantor or any other person for any loss or damage upon the realization or enforcement of or the failure to realize or enforce the Collateral or any part thereof or the failure to allow any of the Collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that the Holder may be responsible or liable for any loss or damage arising from its willful misconduct or gross negligence.

If an Event of Default has occurred and is continuing, the Holder may, but shall be under no obligation to, perform any such covenants or agreements in any manner deemed fit by the Holder without thereby waiving any rights to enforce the Loan Documents. The reasonable expenses (including any reasonable legal costs) incurred by the Holder in respect of the foregoing shall be deemed to be added to and form part of the Obligations outstanding on the date incurred.

ARTICLE 3

3.1 Conversion.

(a) Conversion. At any time on or following the date of effectiveness of the first resale registration statement covering the applicable Conversion Shares and prior to the close of business on the last Trading Day immediately preceding the Maturity Date, this Note shall be convertible (in whole or in part) at the option of a Holder into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing (x) that portion of the outstanding Principal that such Holder elects to convert (the "Conversion Amount") by (y) the Conversion Price then in effect on the date on which a Holder delivers to the Maker a notice of conversion in substantially the form attached hereto as Exhibit B (the "Conversion Notice"). A Holder shall deliver this Note to the Maker at the address designated in the Purchase Agreement at such time that this Note is fully converted. With respect to partial conversions of this Note, the Maker shall keep written records of the amount of this Note converted as of the date of such conversion (each, a "Conversion Date").

(b) Conversion Price. The "Conversion Price" means $0.15 and shall be subject to adjustment as provided herein.

3.2 Delivery of Conversion Shares. As soon as practicable after any conversion or payment of any amount due hereunder in the form of shares of Common Stock in accordance with this Note, and in any event within the Standard Settlement Period thereafter (such date, the "Share Delivery Date"), the Maker shall, at its expense, cause to be issued in the name of and delivered to the relevant Holder, or as such Holder may direct, a certificate or certificates evidencing the number of shares of fully paid and non-assessable Common Stock to which such Holder shall be entitled on such conversion or payment (the "Conversion Shares"), in the applicable denominations based on the applicable conversion or payment, which certificate or certificates shall be free of restrictive and trading legends (except for any such legends as may be required under the Securities Act). In lieu of delivering physical certificates for the Common Stock issuable upon any conversion of this Note, provided the Company's transfer agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer program or a similar program, upon request of such Holder, the Company shall cause its transfer agent to electronically transmit such Conversion Shares issuable upon conversion of this Note to such Holder (or its designee), by crediting the account of such Holder's (or such designee's) broker with DTC through its Deposit Withdrawal Agent Commission system (provided that the same time periods herein as for stock certificates shall apply) as instructed by such Holder (or its designee).

3.3 Adjustment of Conversion Price.

(a) Until the Note has been paid in full or converted in full, the Conversion Price shall be subject to adjustment from time to time as follows (but shall not be increased, other than pursuant to a combination:

(i) Adjustments for Stock Splits and Combinations. If the Maker shall at any time or from time-to-time after the Original Issuance Date effect a split of the outstanding Common Stock, the applicable Conversion Price in effect immediately prior to the stock split shall be proportionately decreased. If the Maker shall at any time or from time-to-time after the Original Issuance Date, combine the outstanding Common Stock into a lesser number of shares, the applicable Conversion Price in effect immediately prior to the combination shall be proportionately increased. Any adjustments under this Section 3.3(a)(i) shall be effective at the close of business on the date the stock split or combination occurs.

(ii) Adjustments for Certain Dividends and Distributions. If the Maker shall at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in Common Stock, then, and in each event, the applicable Conversion Price in effect immediately prior to such event shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

(iii) Adjustment for Other Dividends and Distributions. If the Maker shall at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in other Common Stock, then, and in each event, an appropriate revision to the applicable Conversion Price shall be made and provision shall be made (by adjustments of the Conversion Price or otherwise) so that the Holders of this Note shall receive upon conversions thereof, in addition to the number of shares of Common Stock receivable thereon, the number of securities of the Maker or other issuer (as applicable) or other property that it would have received had this Note been converted into Common Stock in full (without regard to any conversion limitations herein) on the date of such event and had thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities (together with any distributions payable thereon during such period) or assets, giving application to all adjustments called for during such period under this Section 3.3(a)(iii) with respect to the rights of the Holders; provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(iv) Adjustments for Reclassification, Exchange or Substitution. If the Common Stock at any time or from time to time after the Closing Date (but whether before or after the Issuance Date) shall be changed to the same or different number of shares or other securities of any class or classes of stock or other property, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 3.3(a)(i), (ii) and (iii) hereof, or a reorganization, merger, consolidation, or sale of assets provided for in Section 3.3(a)(v) hereof), then, and in each event, an appropriate revision to the Conversion Price shall be made and provisions shall be made (by adjustments of the Conversion Price or otherwise) so that the Holders shall have the right thereafter to convert this Note into the kind and amount of shares of stock or other securities or other property receivable upon reclassification, exchange, substitution or other change, by holders of the number of shares of Common Stock into which such Note might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(v) Adjustment Due to Dilutive Issuance. If the Company shall issue or sell any additional Common Stock after the date hereof (other than any Exempt Issuance), then

the aggregate number of Conversion Shares issuable pursuant to this Note will be increased, from and after the date of such issuance, to that number of shares of Common Stock determined by multiplying (i) the aggregate number of Conversion Shares immediately prior to such issuance or sale, by (ii) a fraction (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance or sale plus the number of shares of Common Stock issued in such issuance or sale (in each case, as determined on a Fully Diluted Basis), and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance or sale (as determined on a Fully Diluted Basis) plus the number of shares of Common Stock that the aggregate consideration received by the Company in such issuance or sale would purchase at the Conversion Price in effect immediately before such issuance or sale. The Conversion Price shall also be proportionately reduced in connection with any such adjustment, such that the aggregate Conversion Price for an exercise in full of this Note after such adjustment shall be equal to such aggregate Conversion Price immediately prior to such adjustment. For purposes hereof, "Fully Diluted Basis" means, with respect to the Common Stock at any time of determination, the number of shares of Common Stock that would be issued and outstanding at such time, assuming that all outstanding options, rights or warrants to subscribe for Common Stock and all derivative and convertible securities have been exercised, converted or exchanged, including this Note.

(vi) Fractional Shares. If any adjustments to the Conversion Price under this Section 3.3 result in a fractional amount, the fractional amount rounded down to the nearest whole cent.

(vii) Consideration for Stock. In case any Common Stock or any Common Stock Equivalents shall be issued or sold:

(1) in connection with any merger or consolidation in which the Maker is the surviving corporation (other than any consolidation or merger in which the previously outstanding Common Stock of the Maker shall be changed to or exchanged for the stock or other securities of another corporation), the amount of consideration therefor shall be, deemed to be the fair value, as determined reasonably and in good faith by the board of directors of the Maker, of such portion of the assets and business of the non-surviving corporation as such board of directors may determine to be attributable to such Common Stock, Convertible Securities, rights or warrants or options, as the case may be; or

(2) in the event of any consolidation or merger of the Maker in which the Maker is not the surviving corporation or in which the previously outstanding Common Stock of the Maker shall be changed into or exchanged for the stock or other securities of another corporation or other property, or in the event of any sale of all or substantially all of the assets of the Maker for stock or other securities or other property of any corporation, the Maker shall be deemed to have issued Common Stock, at a price per share equal to the valuation of the Maker's Common Stock based on the actual exchange ratio on which the transaction was predicated, as applicable, and the fair market value on the date of such transaction of all such

stock or securities or other property of the other corporation. If any such calculation results in adjustment of the applicable Conversion Price, or the number of shares of Common Stock issuable upon conversion of the Note, the determination of the applicable Conversion Price or the number of shares of Common Stock issuable upon conversion of the Note immediately prior to such merger, consolidation or sale, shall be made after giving effect to such adjustment of the number of shares of Common Stock issuable upon conversion of the Note. In the event Common Stock are issued with other shares or securities or other assets of the Maker for consideration which covers both, the consideration computed as provided in this Section 3.3(a)(vii) shall be allocated among such securities and assets as determined in good faith by the board of directors of the Maker.

(viii) Record Date. In case the Maker shall take record of the holders of its Common Stock for the purpose of entitling them to subscribe for or purchase Common Stock or Convertible Securities, then the date of the issue or sale of the Common Stock shall be deemed to be such record date.

(b) No Impairment. The Maker shall not, by amendment of 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 to be observed or performed hereunder by the Maker, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3.3 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holders against impairment.

(c) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Conversion Price or number of shares of Common Stock issuable upon conversion of this Note pursuant to this Section 3.3, the Maker at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Holders a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Maker shall, upon written request of a Holder, at any time, furnish or cause to be furnished to such Holder a like certificate setting forth such adjustments and readjustments, the applicable Conversion Price in effect at the time, and the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon the conversion of this Note. Notwithstanding the foregoing, the Maker shall not be obligated to deliver a certificate unless such certificate would reflect an increase or decrease of at least one percent of such adjusted amount.

(d) Issue Taxes. The Maker shall pay any and all issue and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of Common Stock on conversion of this Note pursuant thereto; *provided, however*, that the Maker shall not be obligated to pay any transfer taxes resulting from any transfer requested by a Holder in connection with any such conversion.

(e) Fractional Shares. No fractional Common Stock shall be issued upon conversion of this Note. In lieu of any fractional shares to which the Holders would otherwise be entitled, the Maker shall pay cash equal such fractional shares multiplied by the Conversion Price then in effect.

(f) Reservation of Common Stock. The Maker shall at all while this Note shall be outstanding, reserve and keep available out of its authorized but unissued Common Stock the Required Minimum of Common Stock (disregarding for this purpose any and all limitations of any kind on such conversion). The Maker shall, from time-to-time, increase the authorized number of shares of Common Stock or take other effective action if at any time the unissued number of authorized shares shall not be sufficient to satisfy the Maker's obligations under this Section 3.3(f).

ARTICLE 4

4.1 Representations and Warranties. The Maker, on its own behalf and on behalf of the Guarantor, as applicable, represents and warrants to the Holder on the date hereof that the representations and warranties set forth in the Purchase Agreement are true and correct.

ARTICLE 5

5.1 Covenants. For so long as the Note is outstanding, without the prior written consent of the Required Holders:

(a) Rank. All payments due under this Note shall rank senior to all other Indebtedness of the Company and its Subsidiaries, except for the Term Notes, which shall be pari passu with the Obligations owing hereunder in accordance with the terms of the Pari Passu and Agency Agreement.

(b) Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guaranty or assume any Indebtedness (other than (i) this Note and the Term Notes and (ii) Permitted Indebtedness).

(c) Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest, deed of trust, or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "Liens") other than Permitted Liens.

(d) Restricted Payments. Except as otherwise provided for in this Note, the Term Notes or the other Loan Documents, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, prepay, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than the Note and the Term Notes, so long as any such payment is made in accordance with the Pari Passu and Agency Agreement) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time such payment is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event of Default has occurred and is continuing or (ii) an event that with the

passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) Restriction on Redemptions, Prepayment and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, prepay, repurchase or declare or pay any cash dividend or distribution on any of its capital stock. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, repurchase, or redeem any of its capital stock, other than repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Company or any Subsidiary in connection with the cessation of such employment or service at no greater than the lower of the original purchase price thereof or its fair market value.

(f) Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales or licenses of inventory and products in the ordinary course of business and (iii) sales of unwanted or obsolete assets.

(g) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its material Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary. The Maker and the Guarantor shall engage in the Business as now conducted by it and natural and logical extensions thereof and businesses related thereto; carry on and conduct its business and operations, including the Business in accordance with good business practices. In addition, the Maker and the Guarantor shall maintain and be in good standing with respect to (i) all governmental and regulatory authorizations, licenses and permits necessary to conduct its business, (ii) compliance with applicable laws and regulations, including related to environmental matters, U.S. anti-money laundering laws and regulations and anti-terrorism laws and regulations and (iii) compliance with its Material Agreements, in the case of (i) and (iii) except to the extent that such failure to maintain, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, in each case that are necessary or material to the conduct of its business, except those that the loss of which, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(i) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original

works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor of the Company and/or any of its Subsidiaries, in each case that are necessary or material to the conduct of its business in full force and effect, except those that the loss of which, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(j) Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated. The Agent shall be listed on property and casualty policies as loss payee and additional insured and such policies shall contain a loss payable clause.

(k) Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of or payment for management, consulting or other services of any kind) with any Affiliate, except in the ordinary course of business in a manner and to an extent consistent with past practice as described in Maker's SEC Reports or otherwise by Maker to Holder in connection herewith and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof.

(l) Use of Proceeds; Compliance with Law. The Maker shall use the proceeds of this Note as set forth in Section 4.5 of the Purchase Agreement. The Maker and each of its Subsidiaries shall comply with all laws applicable to them in all material respects.

(m) Payment of Taxes, Etc. The Maker shall, and shall cause each of its Subsidiaries to, promptly pay and discharge, or cause to be paid and discharged, when due and payable, all lawful taxes, assessments and governmental charges or levies imposed upon the income, profits, property or business of the Maker and the Subsidiaries; provided, however, that any such tax, assessment, charge or levy need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if the Maker or such Subsidiaries shall have set aside on its books adequate reserves with respect thereto, and provided, further, that the Maker and such Subsidiaries will pay all such taxes, assessments, charges or levies forthwith upon the commencement of proceedings to foreclose any lien which may have attached as security therefor.

(n) Financial Statements.

(A) At any time the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, from and after the Original Issuance Date, the Company shall deliver to the Holders, all such reporting required to delivered under Sections 13 and

15(d) of the Exchange Act concurrently with the deliveries thereunder (or in any event by no later than the dates set forth in clauses (B)(1) and (B)(2) below).

(B) At any time the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, from and after the Original Issuance Date, the Company shall deliver to the Holders:

(1) within 120 days after the end of each fiscal year (or if such day is not a Trading Day, on the next succeeding Trading Day), all financial information that would be required to be contained in an annual report on Form 10-K, or any successor or comparable form, filed with the SEC, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and a report on the annual financial statements by the Company's independent registered public accounting firm; and

(2) within 60 days after the end of each of the first three fiscal quarters of each fiscal year (or if such day is not a Trading Day, on the next succeeding Trading Day), all financial information that would be required to be contained in a quarterly report on Form 10-Q, or any successor or comparable form, filed with the SEC, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and financial statements prepared in accordance with GAAP;

in each case, in a manner that complies in all material respects with the requirements specified in such form, except as described above or below; *provided*, *however*, that the Company shall not be required to (i) comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K with respect to any "non-GAAP" financial information contained therein, (ii) provide any information that is not otherwise similar to information currently included in its most recent annual report on Form 10-K or quarterly report on Form 10-Q, (iii) provide separate financial statements or other information contemplated by Rules 3-05, 3-09, 3-10, 3-16, 13-01 or 13-02 of Regulation S-X, or in each case any successor provisions or any schedules required by Regulation S-X or (iv) contain any "segment reporting." In addition, notwithstanding the foregoing, the Company will not be required to (i) comply with Sections 302, 906 and 404 of the Sarbanes-Oxley Act of 2002, as amended, or (ii) otherwise furnish any information, certificates or reports required by Items 307, 308 or 402 of Regulation S-K.

(o) Minimum Cash Balance. The Company shall not permit its total cash balance in the Company Deposit Accounts to be less than One Million Dollars ($1,000,000) at all times (the "**Minimum Cash Balance Requirement**").

(o) Compliance Certificates. The Company shall deliver to the Holders within 5 Trading Days after the end of each month an officer's certificate in the form set out in Exhibit A attached hereto which shall certify, among other things, (i) the cash balance in the Company Deposit Accounts as at such month end, (ii) that no Default or Event of Default has occurred or is continuing, and (iii) that the Maker and the Guarantor are in compliance with all covenants and obligations contained in the Loan Documents.

(p) Notices of Maker. The Maker shall deliver to the Agent and Lightbank prompt notice upon becoming aware of:

(a) the occurrence of any Default or Event of Default (for greater certainty, whether or not such Default or Event of Default is continuing);

(b) any suit, litigation, investigation or other proceeding which is commenced or threatened in writing against the Maker or the Guarantor which involves a claim in excess of $100,000 (or the equivalent amount in any other currency or currencies);

(c) the occurrence of any Material Adverse Effect;

(d) any proposed change in the Maker's or the Guarantor's auditor; or

(e) any notice of default, acceleration, termination or suspension received by either the Maker or the Guarantor in respect of (i) any Indebtedness with an amount outstanding amount in excess of $100,000 or (ii) any Material Agreement,

in each case, together with a detailed statement by a senior officer of the Maker of the steps being taken to cure, prevent or respond to, and the effect of, such event or circumstance, as the case may be.

(q) Change of Control. The Maker shall not enter into any transaction that would result in a Change of Control.

(r) Further Assurances. Upon request of the Required Holders and as necessary to comply with future developments or requirements, the Maker shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Note.

(s) Audits and Visits. The Maker and the Guarantor will, at any time and from time to time during regular business hours on any Trading Day from time to time as requested by the Holder, permit the Holder, or its agents or representatives,(i) on a confidential basis, to examine all books, records and documents in its possession or under its control relating to the Collateral and (ii) to visit its offices, properties and Collateral Locations of the Maker and the Guarantor (as applicable).

(t) Observer Status. The Holder shall be given observer status on the board of directors of the Maker and shall be provided with reasonable written notice of any directors meeting or any matter requiring director approval.

ARTICLE 5

5.1 Conditions Precedent. Prior to the Holder advancing any funds to the Maker hereunder, the conditions precedent contained in the Purchase Agreement shall be satisfied to the Required Holder's discretion:

ARTICLE 6

6.1 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 5.1 prior to 5:00 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 5.1 on a day that is not a Trading Day or later than 5:00 p.m. (New York City time) on any date and earlier than 11:59 p.m. (New York City time) on such date, (c) the Trading Day following the date of delivery to a carrier , if sent by U.S. nationally recognized overnight courier service next Trading Day delivery, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for notice shall be as set forth in the Purchase Agreement.

6.2 Governing Law; Exclusive Jurisdiction; Attorneys' Fees. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. The Company agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Note and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in New York, New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Note and any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. The Company hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of this Note and the other Transaction Documents, then, in addition to the obligations of the Company elsewhere in this Agreement, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding. This Note shall not be interpreted or construed with any presumption against the party causing this Note to be drafted.

6.3 Headings. Article and section headings in this Note are included herein for purposes of convenience of reference only and shall not constitute a part of this Note for any other purpose.

6.4 Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, under any other Loan Document, at law or in equity (including, without limitation, a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a Holder's right to pursue actual damages for any failure by the Maker to comply with the terms of this Note or any other Loan Document. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holders thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Maker (or the performance thereof). The Maker acknowledges that a breach by it of its obligations hereunder will cause irreparable and material harm to the Holders and that the remedy at law for any such breach would be inadequate. Therefore, the Maker agrees that, in the event of any such breach or threatened breach, the Holders shall be entitled, in addition to all other available rights and remedies, at law or in equity, to seek equitable relief, including but not limited to an injunction restraining any such breach or threatened breach, without the necessity of pleading and proving irreparable harm or lack of an adequate remedy at law and without any bond or other security being required.

6.5 Enforcement Expenses. The Maker agrees to pay all costs and expenses of enforcement by the Holders of this Note, including, without limitation, reasonable attorneys' fees and expenses.

6.6 Binding Effect. The obligations of the Maker set forth herein shall be binding upon its successors and assigns, whether or not such successors or assigns are permitted by the terms herein.

6.7 Amendments; Waivers. No provision of this Note may be waived or amended except in a written instrument signed by the Company and the Holders. No waiver of any default with respect to any provision, condition or requirement of this Note shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of the Holders to exercise any right hereunder in any manner impair the exercise of any such right.

6.8 Compliance with Securities Laws. Each Holder of this Note acknowledges that this Note is being acquired solely for such Holder's own account and not as a nominee for any other party, and for investment, and that such Holder shall not offer, sell or otherwise dispose of this Note in violation of applicable securities laws. This Note and any Note issued in substitution or replacement therefor shall be stamped or imprinted with a legend in substantially the following form:

"THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR

PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR OR THE MAKER TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY."

6.9 Exclusive Jurisdiction; Venue. Any action, proceeding or claim arising out of, or relating in any way to, this Note shall be brought and enforced only as provided in the Purchase Agreement.

6.10 Failure or Indulgence Not Waiver. No failure or delay on the part of the Holders in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

6.11 Maker Waivers. Except as otherwise specifically provided herein, the Maker and all others that may become liable for all or any part of the obligations evidenced by this Note, hereby waive presentment, demand, notice of nonpayment, protest and all other demands' and notices in connection with the delivery, acceptance, performance and enforcement of this Note, and do hereby consent to any number of renewals of extensions of the time or payment hereof and agree that any such renewals or extensions may be made without notice to any such persons and without affecting their liability herein and do further consent to the release of any person liable hereon, all without affecting the liability of the other persons, firms or Maker liable for the payment of this Note, and do hereby waive the right to a trial by jury.

6.12 Definitions. Capitalized terms used herein and not defined shall have the meanings set forth in the Purchase Agreement unless otherwise defined in Exhibit B attached hereto.

6.13 Taxes Yield Protection and Increased Costs

(a) All payments made to the Holder will be made free and clear of any taxes, withholdings or other deductions of any nature. If any such taxes, deductions or withholdings are required by law to be made or paid and the Maker or the Guarantor makes or pays such deductions or withholdings from payments it makes to the Holder, the Maker and the Guarantor shall, as a separate obligation, pay to the Holder such amounts as are necessary to indemnify the Holder from any losses arising from such taxes, deductions or withholdings.

(b) The Maker and the Guarantor will reimburse the Holder on demand for any reasonable costs incurred by the Holder in performing its obligations under this Note or under any other Loan Document resulting from any change in law, regulation, treaty or regulatory requirement (whether or not having the force of law) including, without limitation, any reserve or special deposit requirements, any tax or capital requirements or any change in the compliance of the Holder therewith that, in the determination of the Holder, has the effect of increasing the cost of funding to the Holder or reducing its effective rate of return on capital.

6.14 Indemnities.

(a) The Maker and the Guarantor agree to indemnify and hold harmless the Holder and each of its affiliates and the directors, officers, employees, partners, agents, trustees, administrators, managers, advisors and representatives of it and its affiliates (each, an **"Indemnified Party"**) from and against, any and all claims, damages, losses, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnified Party), incurred by any Indemnified Party or asserted against any Indemnified Party by any person (including the Maker or the Guarantor) other than an Indemnified Party, arising out of, in connection with, or by reason of:

(i) the execution or delivery of this Note or any agreement or instrument contemplated by this Note (including, without limitation, any Loan Document), the performance by the parties thereto of their respective obligations under this Note or any other Loan Document or the consummation of the transactions contemplated by such documents;

(ii) any loan, extension of credit, or proposed use of the proceeds therefrom;

(iii) any actual or alleged presence or release of hazardous materials on or from any property currently or formerly owned or operated by the Maker, the Guarantor or any subsidiary thereof, or any environmental liability related to the Maker, the Guarantor or any subsidiary thereof in any way; or

(iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Maker or the Guarantor, and regardless of whether any Indemnified Party is a party thereto;

provided that, such indemnity shall not (i) apply to any income or gains of Holder with respect to payments by Maker with respect to this Note, Holder's conversion of this Note or the sale of any shares obtained pursuant to this Note; or (ii) be available to any Indemnified Party to the extent that such claims, damages, losses, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party.

(b) In addition to any liability or obligation of the Maker or the Guarantor to the Holder under any other provision of this Note, the Maker and the Holder shall indemnify and hold the Holder harmless against any and all losses, claims, costs, damages or liabilities (including any expense or cost incurred in the liquidation and re-deployment of funds acquired to fund or maintain any portion of a loan or advance and reasonable out-of-pocket expenses and legal fees) incurred by the Holder as a result of or in connection with the Maker or the Guarantor's failure to fulfil any of its obligations, including any cost or expense incurred by reason of the liquidation or re-employment in whole or in part of deposits or other funds required by the

Holder to fund any bankers' acceptance or letter of credit, or to fund or maintain any loan, as a result of the Maker's or the Guarantor's failure to complete a drawdown or to make any payment, repayment or prepayment on the date required hereunder or specified by it in any notice given hereunder. A certificate from the Holder setting forth the amount or amounts necessary to compensate it for any such loss, claim, cost, damage or liability, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Maker, shall be conclusive absent manifest error.

(c) The Maker and the Guarantor agrees, to the fullest extent permitted by applicable law, not to assert, and hereby waives, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (including, without limitation, any loss of profits or anticipated savings), as opposed to actual or direct damages, resulting from this Note or any Loan Document or arising out of such Indemnified Party's activities in connection herewith or therewith.

6.15 Survival.

The termination of this Note shall not relieve the Maker or the Guarantor from their obligations to the Holder arising prior to such termination, such as obligations arising as a result of or in connection with any breach of this Note, any failure to comply with this Note or the inaccuracy of any representations and warranties made or deemed to have been made prior to such termination, and obligations arising pursuant to all indemnity obligations contained herein.

The Maker's and the Guarantor's obligations to indemnify the Holder with respect to the expenses, damages, losses, costs, liabilities and other obligations in accordance with Section 6.14 herein shall survive until the later of (i) all applicable statute of limitations periods with respect to actions that may be brought against the Holder or any other indemnified party have run and (ii) 365 days following the entry of a final non-appealable order of a court of competent jurisdiction with respect to actions brought against the Holder or any other Indemnified Party that were initiated prior to the end of the applicable statute of limitations for such actions.

Notwithstanding the foregoing, upon irrevocable payment in full of all principal, interest and other outstanding obligations, Agent will release its security interest in the Collateral.

6.16 Severability. Each provision of this Note shall be severable from every other provision hereof for the purpose of determining the legal enforceability of any specific provision. This Note may be executed and delivered in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same agreement.

[Signature Page Follows]

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

SPRINGBIG HOLDINGS, INC.

By: /s/ Paul Sykes
Name: Paul Sykes
Title: Chief Financial Officer

[*Signature page for Convertible Note*]

EXHIBIT A

Definitions

(a) "Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(b) "Change of Control" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(c) "Collateral" means all present and after acquire property and any proceeds thereof that is subject, or intended to be subject, to the Liens created by any Loan Document.

(d) "Common Stock" means issued and outstanding shares in the capital of an entity.

(e) "Default" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

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

(g) "Exempt Issuance" means the issuance of (a) shares of Common Stock, restricted stock units or options issued to consultants, 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) the Common Stock issued upon conversion of the Notes, (c) securities issued upon the exercise or exchange of or conversion of any securities issued prior to the execution of the Purchase Agreement, other than the L1 Documents or pursuant to the L1 Debt Settlement Agreement, (d) securities issued in connection with any merger, acquisition or strategic transaction approved by a majority of the directors of the Company and the Lead Investor and Lightbank.

(h) "Fundamental Transaction" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to

the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(i) "Group" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

(j) "Guarantor" means SpringBig, Inc. a Delaware corporation.

(k) "Indebtedness" means: (a) all obligations for borrowed money; (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, current swap agreements, interest rate hedging agreements, interest rate swaps, or other financial products; (c) all obligations or liabilities secured by a lien or encumbrance on any asset of the Maker, irrespective of whether such obligation or liability is assumed; and (d) any obligation guaranteeing or intended to guaranty (whether directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse) any of the foregoing obligations of any other person.

(l) "Lightbank" means Lightbank II, L.P.

(m) "Loan Documents" means this Note, the Pledge and Security Agreement, the Guaranty, the Pari Passu and Agency Agreement, the Transaction Documents (as defined in the Purchase Agreement) and all other agreements (including inter-creditor agreements), documents and instruments required or contemplated to be delivered under this Note, now or hereafter, by the Maker or the Guarantor to the Holder and any other document which, pursuant to the provisions of this Note, is stated to be a Loan Document or is otherwise executed and delivered by the Maker or the Guarantor in connection with the obligations owed to the Holder hereunder. "Loan Document" means any one of them.

(n) "Material Adverse Effect" has the meaning assigned to such term in the Purchase Agreement.

(o) "Obligations" means the Principal, any accrued and outstanding Interest and any other amounts owing hereunder or under any other Loan Document.

(p) "Pari Passu and Agency Agreement" means the pari passu and agency agreement dated on or about the date hereof entered between the Holders (as defined hereunder and under the Term Notes) and acknowledged and agreed to by the Maker and the Guarantor.

(q) "Permitted Indebtedness" means (i) Indebtedness evidenced by the Notes and the Term Notes, (ii) capitalized leases and purchase money security interests for purchases of equipment and assets used in the business in the ordinary course of business, in an aggregate amount outstanding not to exceed $100,000, and (iii) any Indebtedness incurred, issued or outstanding on the Original Issuance Date and set out in Schedule I attached hereto and any refinancing, replacement, exchange, renewal, repayment or extension thereof.

(r) "Permitted Liens" means (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of

business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen's Liens, mechanics' Liens and other similar Liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens securing Permitted Indebtedness, and (v) incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under this Note and (viii) any Liens issued or outstanding on the Original Issuance Date and set out in Schedule I attached hereto.

(s) "Principal Market" means any of the OTCQX Best Market, OTCQB Venture Market, New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Select Market, or the Nasdaq Global Market, or any successors of any of these trading platforms or exchanges on which the Common Stock is listed or quoted for trading, as applicable.

(t) "Required Holders" shall mean Holders holding more than 50% of the aggregate then outstanding Obligations, which must include the Lead Investor and Lightbank.

(u) "Required Minimum" means a number of shares of Common Stock equal to 150% of the number of Conversion Shares issuable upon conversion of the Notes as of the Original Issuance Date.

(v) "SEC" means the United States Securities and Exchange Commission or the successor thereto.

(w) "Securities Act" means the Securities Act of 1933, as amended.

(x) "Standard Settlement Period" means two Trading Days.

(y) "Subject Entity" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(z) "Subsidiary" has the meaning ascribed thereto in the Purchase Agreement.

(aa) "Term Notes" means the Senior Secured Term Promissory Notes to be issued by the Company bearing interest at the rate of 12% per annum and to be secured pursuant to the Security Agreement.

(bb) "Trading Day" means a day on which the Common Stock are traded on a Principal Market for at least 4.5 hours.

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

EXHIBIT C

FORM OF CONVERSION NOTICE

(To be Executed by a Holder in order to Convert the Note)

The undersigned hereby irrevocably elects to convert $ ________________ of the principal amount of the above Note No. ___ into shares of Common Stock of SpringBig Holdings, Inc. (the "Maker") according to the conditions hereof, as of the date written below.

Date of Conversion:

Conversion Amount:

Conversion Price:

Number of shares of Common Stock beneficially owned or deemed beneficially owned by the Holder on the Conversion Date:

Number of shares of Common Stock to be issued:

[HOLDER]

By: ______________________________

Name:

Title:

Address:

THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS NOTE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT SECURED BY SUCH SECURITIES. ANY TRANSFEREE OF THIS SECURED TERM PROMISSORY NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS SECURED TERM PROMISSORY NOTE.

SpringBig Holdings, Inc.

Senior Secured Term Promissory Note

Original Issuance Date: January 23, 2024 Principal: $_________

Maturity Date: January 23, 2026

FOR VALUE RECEIVED, SpringBig Holdings, Inc., a Delaware corporation (the "Maker" or the "Company"), hereby promises to pay to ___________________________, or registered assigns (the "Holder"), the principal sum of $__________ (as such amount may be increased from time to time pursuant to Section 1.2 below, the "Principal") pursuant to the terms of this Senior Secured Term Promissory Note (this "Note" and together with all other Senior Secured Term Promissory Note issued pursuant to the Purchase Agreement (as defined below), the "Notes"). For certainty, all amounts referred to in this Note and each other Loan Document are in the currency of the United States of America unless otherwise explicitly stated.

The Maturity Date of this Note shall be 24 months from the Original Issuance Date of this Note, unless the Required Holders have given notice to the Maker that it elects to accelerate the Maturity Date to the extent explicitly permitted by this Note (the "Maturity Date"). The Maturity Date is the date upon which the Obligations shall be due and payable unless prepaid earlier. This Note may not be repaid in whole or in part except as otherwise explicitly set forth herein.

This Note is issued secured by a first lien security interest as evidenced by and to the extent set forth in that certain Pledge and Security Agreement granted by the Maker and the Guarantor, to Shalcor Management Inc., (the "Lead Investor") as agent for and on behalf of the Holders (both as defined herein and as defined under the Convertible Notes) dated as of the Original Issuance Date (the "Pledge and Security Agreement").

All payments under or pursuant to this Note shall be made in United States dollars in immediately available funds to the Holders at the addresses of the Holders set forth in the Purchase

Agreement (as hereinafter defined) or at such other place as a Holder may designate from time-to-time in writing to the Maker or by wire transfer of funds to a Holder's account designated in writing by such Holder to the Maker.

1.1 Purchase Agreement; Subsidiary Guaranty. This Note has been executed and delivered pursuant to the Note Purchase Agreement, dated as of the Original Issuance Date (as the same may be amended from time to time, the "Purchase Agreement"), by and among the Maker, the Lead Investor and the other Purchasers (as defined therein). Capitalized words and terms used and not otherwise defined herein shall have the meanings set forth for such terms in the Purchase Agreement. The full amount of this Note and all the cash payment obligations of the Company under the Loan Documents shall be guaranteed in full by the Guarantor pursuant to the Guaranty.

1.2 Interest. Interest on this Note shall commence accruing on the Original Issuance Date at 12% per annum (the "Interest") calculated based on the outstanding Obligations, shall be computed on the basis of a 360-day year assuming a 30-day month (i.e. 30/360 basis) and shall be payable by the Company to the Holders. Interest is payable semi-annually in arrears on each January 15 and July 15, commencing on July 15, 2024, to Holders of record at the close of business on the preceding January 1 and July 1 (whether or not such day is a Trading Day), respectively. Interest on this Note shall be payable in cash.

Notwithstanding any other provision of this Note or any other Loan Document, upon the occurrence of any Default which is continuing, the Borrowers shall pay interest and fees on the Obligations at a rate (payable on Demand as well after as before judgment) equal to the Interest rate then payable in accordance with this Agreement plus 8.0% per annum (such increased rate to be effective on the date of such Default and thereafter until the date such Default has been cured or waived in writing by the Required Holders) which shall compensate the Holders for the additional risk being assumed in connection with the outstanding Obligations during the continuance of such Default.

1.3 No Prepayment. The Maker may not prepay any portion of the Principal prior to the Maturity Date.

1.4 Mandatory Repayments.

(a) Proceeds of Debt/Equity Issuance. The Maker shall repay to the Holder the Obligations in an aggregate principal amount equal to 25% of the net cash proceeds of any equity raised from an initial public or private offering undertaken by the Maker (other than an Exempt Issuance), and 100% of the net cash proceeds of any issuance of Indebtedness (other than Permitted Indebtedness) undertaken by the Maker or its Subsidiaries, in each case within three (3) Trading Days after the closing and funding of such equity raise or debt financing.

(b) Asset Sales. The Maker shall repay to the Holder the Obligations in an aggregate principal amount equal to 100% of the net cash proceeds of any asset disposition (other than an asset disposition permitted hereunder) by the Maker or the Guarantor forthwith and no later than ten (10) Trading Days following receipt. Notwithstanding the foregoing, the Maker may retain net cash proceeds from an asset disposition if such cash

proceeds are applied within 180 days of their receipt to acquire assets of the type used or useful in the Business, provided that the Maker notifies the Holder of its intentions regarding application of the Cash Proceeds within ten (10) Business Days of their receipt and the Required Holders consent to such application in writing.

(c) Insurance Proceeds. The Maker shall repay to the Holder the Obligation in an aggregate principal amount equal to 100% of the net cash proceeds from any insurance claim (other than liability and business interruption insurance to the extent the business interruption is used to pay salaries or wages) made or settled by the Maker or the Guarantor forthwith and no later than ten (10) Trading Days following receipt by the Maker or the Guarantor, as applicable, unless the insurance proceeds are applied within 180 days of their receipt to acquire assets of the type used or useful in the Business, provided that, the Maker notifies the Holder of their intentions regarding application of the insurance proceeds within ten (10) Business Days of their receipt and the Required Holders consent to such application in writing

For certainty, any repayment received by the Holders pursuant to this Section shall, unless applied earlier in the sole discretion of the Required Holders, be held in trust by the Holders and applied to payments as and when they come due in accordance with the Pari Passu and Agency Agreement so as not to breach the restriction in Section 1.3 on prepayments. Notwithstanding the foregoing, all amounts received pursuant to this Section 1.4 shall be applied first to Obligations outstanding under this Note on a pro-rata basis, and second to obligations outstanding under the Convertible Notes.

1.5 Payment on Non-Trading Days. For any relevant date other than the Maturity Date, whenever any payment to be made shall be due on a day which is not a Trading Day, any payment due on such date will be postponed to the next day that is a Trading Day

1.6 Transfer. Neither the Maker nor the Guarantor may assign any of its rights hereunder or under any other Loan Document without the Holder's prior written consent, given or withheld in the Holder's sole discretion. For greater certainty, the Holder may, subject to applicable laws, assign all or any portion of its right and obligations under this Note or any of the Loan Documents at any time, upon reasonable prior notice to Maker but without the consent of the Maker or the Guarantor; provided that, unless an Event of Default has occurred and is then continuing, the Holder may not transfer to any Person that is reasonably identified by Maker a competitor of the Maker (or an Affiliate of such competitor).

1.7 Replacement. Upon receipt of a duly executed Affidavit of Loss and Indemnity Agreement in customary form from a Holder with respect to the loss, theft or destruction of this Note (or any replacement hereof), or, in the case of a mutilation of this Note, upon surrender and cancellation of such Note, the Maker shall issue a new Note, of like tenor and amount, in lieu of such lost, stolen, destroyed or mutilated Note.

1.8 Status of Note. The obligations of the Maker under this Note shall rank senior to all other existing Indebtedness and equity of the Company, other than the amounts owed under the Convertible Notes, to the extent of the first lien security interest in the collateral per the Pledge

and Security Agreement. The obligations of the Maker under this Note shall rank *pari passu* with the amounts owed under the Convertible Notes and to the Holders.

ARTICLE 2

2.1 Events of Default. An "Event of Default" under this Note shall mean the following (unless the Event of Default is waived in writing by the Required Holders):

(a) Any default in the payment of the Principal when due (whether on the Maturity Date or by acceleration or otherwise);

(b) Following a three Trading Day opportunity to cure, any default in the payment of any Obligations (including any Principal or interest) when due (whether on the Maturity Date or by acceleration or otherwise);

(c) Except as otherwise permitted in this Note, the Maker shall fail to observe or perform any other material covenant, condition or agreement contained in this Note or any Loan Document, including, for the avoidance of doubt, the Maker issuing any Indebtedness or the imposition of a Lien upon any of the assets of the Maker or any subsidiary, except for Permitted Indebtedness or Permitted Liens or as otherwise expressly permitted under Article 4; provided that if the Resale Registration Statement is not declared effective by the required effective date due to factors outside the Maker's control, including due to SEC delays, such failure to meet the required effective date shall not be considered an Event of Default under this Section 2.1;

(d) the Maker or any of its Subsidiaries shall (A) default in any payment of any amount or amounts of principal of or interest (if any) on any Indebtedness (other than Indebtedness under this Note or the Convertible Notes), the aggregate principal amount of which Indebtedness is in excess of $100,000 or (B) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Indebtedness to cause with the giving of notice if required, such Indebtedness to become due prior to its stated maturity;

(e) any representation or warranty made by the Maker or any of its Subsidiaries herein or in the Purchase Agreement, this Note or any other Loan Document shall prove to have been false or incorrect or breached in a material respect on the date as of which made;

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

operations or issue a press release regarding same; or (vii) take any action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing;

(g) a proceeding or case shall be commenced in respect of the Maker or any of its Subsidiaries, without its application or consent, in any court of competent jurisdiction, seeking: (i) the liquidation, reorganization, moratorium, dissolution, winding up, or composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets in connection with the liquidation or dissolution of the Maker or any of its Subsidiaries; or (iii) similar relief in respect of it under any law providing for the relief of debtors, and such proceeding or case described in clause (i), (ii) or (iii) shall continue undismissed, or unstayed and in effect, for a period of 30 days or any order for relief shall be entered in an involuntary case under United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic) against the Maker or any of its Subsidiaries or action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing shall be taken with respect to the Maker or any of its Subsidiaries and shall continue undismissed, or unstayed and in effect for a period of 30 days;

(h) one or more final judgments or orders for the payment of money aggregating in excess of $100,000 (or its equivalent in the relevant currency of payment) are rendered against one or more of the Company and/or any of its Subsidiaries, that is not dismissed or stayed within 30 days;

(i) the Maker's Common Stock ceases to be listed or quoted for trading on any Principal Market or a cease trade order is applied to the Maker's Common Stock; or

(j) the occurrence of a Change of Control;

(k) the Maker or the Guarantor ceases to carry on business;

(l) if any security delivered pursuant to this Note or any other Loan Document ceases to be enforceable or any security interest granted thereunder ceases to constitute a valid and effective lien with the priority contemplated hereunder; or the Maker or the Guarantor contests the validity or enforceability thereof or denies it has any further liability or obligation thereunder;

(n) any material insurance policy of the Maker or the Guarantor has lapsed or is not otherwise maintained in accordance with the requirements contained herein; or

(o) the continuance of a default under any Note or any Convertible Note beyond any waiver period, forbearance period or applicable cure periods (including, without limitation, any extensions of such cure periods agreed to in writing by all of the Required Holders.

2.2 <u>Remedies Upon an Event of Default</u>.

(a) Upon the occurrence of any Event of Default, the Maker shall immediately notify the Agent of the occurrence of such Event of Default, describing the event or factual

situation giving rise to the Event of Default and specifying the relevant subsection or subsections of Section 2.1 hereof under which such Event of Default has occurred.

(b) At any time an Event of Default (other than under Section 2.1(f) or (g)) has occurred and is continuing, the Required Holders may at their option declare, by written notice to the Maker, the entire Principal amount and all other Obligations then outstanding to become due and payable immediately, without presentment, demand, protest or other notice of any kind except as set out earlier in this paragraph, all of which are hereby waived by the Maker, and the Holder may take all steps necessary to enforce upon any security granted to the Holder and otherwise avail itself of any and all remedies available to the Holder at law, by contract or in equity.

(c) At any time an Event of Default under Section 2.1(f) or (g) has occurred and is continuing, then immediately and without notice or demand, the entire Principal amount and any other obligations then outstanding to become due and payable, without presentment, demand, protest or other notice of any kind except as set out earlier in this paragraph, all of which are hereby waived by the Maker, and the Holder may take all steps necessary to enforce upon any security granted to the Holder and otherwise avail itself of any and all remedies available to the Holder at law, by contract or in equity.

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Holder under this Note or under any other Loan Document are cumulative and are in addition to, and not in substitution for, any rights or remedies provided by applicable law or by equity; and any single or partial exercise by the Holder of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Note or other Loan Document by the Maker or the Guarantor shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Holder may be lawfully entitled for such default or breach.

The Holder shall not have any obligation to the Maker, Guarantor or any other person to realize any collateral or enforce any of the Loan Documents or any part thereof or to allow any of the Collateral to be sold, dealt with or otherwise disposed of. The Holder shall not be responsible or liable to the Maker, Guarantor or any other person for any loss or damage upon the realization or enforcement of or the failure to realize or enforce the Collateral or any part thereof or the failure to allow any of the Collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that the Holder may be responsible or liable for any loss or damage arising from its willful misconduct or gross negligence.

If an Event of Default has occurred and is continuing, the Holder may, but shall be under no obligation to, perform any such covenants or agreements in any manner deemed fit by the Holder without thereby waiving any rights to enforce the Loan Documents. The reasonable expenses (including any reasonable legal costs) incurred by the Holder in respect of the foregoing shall be deemed to be added to and form part of the Obligations outstanding on the date incurred.

ARTICLE 3

3.1 Representations and Warranties. The Maker, on its own behalf and on behalf of the Guarantor, as applicable, represents and warrants to the Holder on the date hereof that the representations and warranties set forth in the Purchase Agreement are true and correct.

ARTICLE 4

4.1 Covenants. For so long as the Note is outstanding, without the prior written consent of the Required Holders:

(a) Rank. All payments due under this Note shall rank senior to all other Indebtedness of the Company and its Subsidiaries, except for the Convertible Notes, which shall be pari passu with the Obligations owing hereunder in accordance with the terms of the Pari Passu and Agency Agreement.

(b) Incurrence of Indebtedness. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guaranty or assume any Indebtedness (other than (i) this Note and the Convertible Notes and (ii) Permitted Indebtedness).

(c) Existence of Liens. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest, deed of trust, or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries (collectively, "Liens") other than Permitted Liens.

(d) Restricted Payments. Except as otherwise provided for in this Note, the Convertible Notes or the other Loan Documents, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, prepay, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than the Note and the Convertible Notes, so long as any such payment is made in accordance with the Pari Passu and Agency Agreement) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time such payment is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) Restriction on Redemptions, Prepayment and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, prepay, repurchase or declare or pay any cash dividend or distribution on any of its capital stock. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, repurchase, or redeem any of its capital stock, other than repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Company or any Subsidiary in connection with the cessation of such employment or service at no greater than the lower of the original purchase price thereof or its fair market value.

(f) <u>Restriction on Transfer of Assets</u>. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales or licenses of inventory and products in the ordinary course of business and (iii) sales of unwanted or obsolete assets.

(g) <u>Preservation of Existence, Etc.</u> The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its material Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary. The Maker and the Guarantor shall engage in the Business as now conducted by it and natural and logical extensions thereof and businesses related thereto; carry on and conduct its business and operations, including the Business in accordance with good business practices. In addition, the Maker and the Guarantor shall maintain and be in good standing with respect to (i) all governmental and regulatory authorizations, licenses and permits necessary to conduct its business, (ii) compliance with applicable laws and regulations, including related to environmental matters, U.S. anti-money laundering laws and regulations and anti-terrorism laws and regulations and (iii) compliance with its Material Agreements, in the case of (i) and (iii) except to the extent that such failure to maintain, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect.

(h) <u>Maintenance of Properties, Etc.</u> The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, in each case that are necessary or material to the conduct of its business, except those that the loss of which, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(i) <u>Maintenance of Intellectual Property</u>. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor of the Company and/or any of its Subsidiaries, in each case that are necessary or material to the conduct of its business in full force and effect, except those that the loss of which, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(j) <u>Maintenance of Insurance</u>. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any

governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated. The Agent shall be listed on property and casualty policies as loss payee and additional insured and such policies shall contain a loss payable clause.

(k) Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of or payment for management, consulting or other services of any kind) with any Affiliate, except in the ordinary course of business in a manner and to an extent consistent with past practice as described in Maker's SEC reports or otherwise by Maker to Holder in connection herewith and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof.

(l) Use of Proceeds; Compliance with Law. The Maker shall use the proceeds of this Note as set forth in Section 4.5 of the Purchase Agreement. The Maker and each of its Subsidiaries shall comply with all laws applicable to them in all material respects.

(m) Payment of Taxes, Etc. The Maker shall, and shall cause each of its Subsidiaries to, promptly pay and discharge, or cause to be paid and discharged, when due and payable, all lawful taxes, assessments and governmental charges or levies imposed upon the income, profits, property or business of the Maker and the Subsidiaries; provided, however, that any such tax, assessment, charge or levy need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if the Maker or such Subsidiaries shall have set aside on its books adequate reserves with respect thereto, and provided, further, that the Maker and such Subsidiaries will pay all such taxes, assessments, charges or levies forthwith upon the commencement of proceedings to foreclose any lien which may have attached as security therefor.

(n) Financial Statements.

(A) At any time the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, from and after the Original Issuance Date, the Company shall deliver to the Holders, all such reporting required to delivered under Sections 13 and 15(d) of the Exchange Act concurrently with the deliveries thereunder (or in any event by no later than the dates set forth in clauses (B)(1) and (B)(2) below).

(B) At any time the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, from and after the Original Issuance Date, the Company shall deliver to the Holders:

(1) within 120 days after the end of each fiscal year (or if such day is not a Trading Day, on the next succeeding Trading Day), all financial information that would be required to be contained in an annual report on Form 10-K, or any successor or comparable form, filed with the SEC, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and a report on the annual financial statements by the Company's independent registered public accounting firm; and

(2) within 60 days after the end of each of the first three fiscal quarters of each fiscal year (or if such day is not a Trading Day, on the next succeeding Trading Day), all financial information that would be required to be contained in a quarterly report on Form 10-Q, or any successor or comparable form, filed with the SEC, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and financial statements prepared in accordance with GAAP;

in each case, in a manner that complies in all material respects with the requirements specified in such form, except as described above or below; *provided*, *however*, that the Company shall not be required to (i) comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K with respect to any "non-GAAP" financial information contained therein, (ii) provide any information that is not otherwise similar to information currently included in its most recent annual report on Form 10-K or quarterly report on Form 10-Q, (iii) provide separate financial statements or other information contemplated by Rules 3-05, 3-09, 3-10, 3-16, 13-01 or 13-02 of Regulation S-X, or in each case any successor provisions or any schedules required by Regulation S-X or (iv) contain any "segment reporting." In addition, notwithstanding the foregoing, the Company will not be required to (i) comply with Sections 302, 906 and 404 of the Sarbanes-Oxley Act of 2002, as amended, or (ii) otherwise furnish any information, certificates or reports required by Items 307, 308 or 402 of Regulation S-K.

(o) Minimum Cash Balance. The Company shall not permit its total cash balance in the Company Deposit Accounts to be less than One Million Dollars ($1,000,000) at all times (the "**Minimum Cash Balance Requirement**").

(p) Compliance Certificates. The Company shall deliver to the Holders within 10 Trading Days after the end of each month an officer's certificate in the form set out in Exhibit A attached hereto which shall certify, among other things, (i) the cash balance in the Company Deposit Accounts as at such month end, (ii) that no Default or Event of Default has occurred or is continuing, and (iii) that the Maker and the Guarantor are in compliance with all covenants and obligations contained in the Loan Documents.

(q) Notices of Maker. The Maker shall deliver to the Agent and Lightbank prompt notice upon becoming aware of:

(a) the occurrence of any Default or Event of Default (for greater certainty, whether or not such Default or Event of Default is continuing);

(b) any suit, litigation, investigation or other proceeding which is commenced or threatened in writing against the Maker or the Guarantor which involves a claim in excess of $100,000 (or the equivalent amount in any other currency or currencies);

(c) the occurrence of any Material Adverse Effect;

(d) any proposed change in the Maker's or the Guarantor's auditor; or

(e) any notice of default, acceleration, termination or suspension received by either the Maker or the Guarantor in respect of (i) any Indebtedness with an amount outstanding amount in excess of $100,000 or (ii) any Material Agreement,

in each case, together with a detailed statement by a senior officer of the Maker of the steps being taken to cure, prevent or respond to, and the effect of, such event or circumstance, as the case may be.

(r) Change of Control. The Maker shall not enter into any transaction that would result in a Change of Control.

(s) Further Assurances. Upon request of the Required Holders and as necessary to comply with future developments or requirements, the Maker shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Note.

(t) Audits and Visits. The Maker and the Guarantor will, at any time and from time to time during regular business hours on any Trading Day from time to time as requested by the Holder, permit the Holder, or its agents or representatives,(i) on a confidential basis, to examine all books, records and documents in its possession or under its control relating to the Collateral and (ii) to visit its offices, properties and Collateral Locations of the Maker and the Guarantor (as applicable).

(u) Observer Status. The Holder shall be given observer status on the board of directors of the Maker and shall be provided with reasonable written notice of any directors meeting or any matter requiring director approval.

ARTICLE 5

5.1 Conditions Precedent. Prior to the Holder advancing the funds to the Maker hereunder, the conditions precedent contained in the Purchase Agreement shall be satisfied to the Required Holder's discretion:

ARTICLE 6

6.1 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 5.1 prior to 5:00 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 5.1 on a day that is not a Trading Day or later than 5:00 p.m. (New York City time) on any date and earlier than 11:59 p.m. (New York City time) on such date, (c) the Trading Day following the date of delivery to a carrier , if sent by U.S. nationally recognized overnight courier service next Trading Day delivery, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for notice shall be as set forth in the Purchase Agreement.

6.2 Governing Law; Exclusive Jurisdiction; Attorneys' Fees. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. The Company agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this

Note and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in New York, New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Note and any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. The Company hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of this Note and the other Transaction Documents, then, in addition to the obligations of the Company elsewhere in this Agreement, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding. This Note shall not be interpreted or construed with any presumption against the party causing this Note to be drafted.

6.3 Headings. Article and section headings in this Note are included herein for purposes of convenience of reference only and shall not constitute a part of this Note for any other purpose.

6.4 Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, under any other Loan Document, at law or in equity (including, without limitation, a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a Holder's right to pursue actual damages for any failure by the Maker to comply with the terms of this Note or any other Loan Document. Amounts set forth or provided for herein with respect to payments shall be the amounts to be received by the Holders thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Maker (or the performance thereof). The Maker acknowledges that a breach by it of its obligations hereunder will cause irreparable and material harm to the Holders and that the remedy at law for any such breach would be inadequate. Therefore, the Maker agrees that, in the event of any such breach or threatened breach, the Holders shall be entitled, in addition to all other available rights and remedies, at law or in equity, to seek equitable relief, including but not limited to an injunction restraining any such breach or threatened breach, without the necessity of pleading and proving irreparable harm or lack of an adequate remedy at law and without any bond or other security being required.

6.5 Enforcement Expenses. The Maker agrees to pay all costs and expenses of enforcement by the Holders of this Note, including, without limitation, reasonable attorneys' fees and expenses.

6.6 Binding Effect. The obligations of the Maker set forth herein shall be binding upon its successors and assigns, whether or not such successors or assigns are permitted by the terms herein.

6.7 Amendments; Waivers. No provision of this Note may be waived or amended except in a written instrument signed by the Company and the Holders. No waiver of any default with respect to any provision, condition or requirement of this Note shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of the Holders to exercise any right hereunder in any manner impair the exercise of any such right.

6.8 Compliance with Securities Laws. Each Holder of this Note acknowledges that this Note is being acquired solely for such Holder's own account and not as a nominee for any other party, and for investment, and that such Holder shall not offer, sell or otherwise dispose of this Note in violation of applicable securities laws. This Note and any Note issued in substitution or replacement therefor shall be stamped or imprinted with a legend in substantially the following form:

> "THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR OR THE MAKER TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY."

6.9 Exclusive Jurisdiction; Venue. Any action, proceeding or claim arising out of, or relating in any way to, this Note shall be brought and enforced only as provided in the Purchase Agreement.

6.10 Failure or Indulgence Not Waiver. No failure or delay on the part of the Holders in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

6.11 Maker Waivers. Except as otherwise specifically provided herein, the Maker and all others that may become liable for all or any part of the obligations evidenced by this Note, hereby waive presentment, demand, notice of nonpayment, protest and all other demands' and notices in connection with the delivery, acceptance, performance and enforcement of this Note, and do hereby consent to any number of renewals of extensions of the time or payment hereof and agree that any such renewals or extensions may be made without notice to any such persons and without affecting their liability herein and do further consent to the release of any person liable hereon, all

without affecting the liability of the other persons, firms or Maker liable for the payment of this Note, **and do hereby waive the right to a trial by jury**.

6.12 Definitions. Capitalized terms used herein and not defined shall have the meanings set forth in the Purchase Agreement unless otherwise defined in Exhibit B attached hereto.

6.13 Taxes Yield Protection and Increased Costs

(a) All payments made to the Holder will be made free and clear of any taxes, withholdings or other deductions of any nature. If any such taxes, deductions or withholdings are required by law to be made or paid and the Maker or the Guarantor makes or pays such deductions or withholdings from payments it makes to the Holder, the Maker and the Guarantor shall, as a separate obligation, pay to the Holder such amounts as are necessary to indemnify the Holder from any losses arising from such taxes, deductions or withholdings.

(b) The Maker and the Guarantor will reimburse the Holder on demand for any reasonable costs incurred by the Holder in performing its obligations under this Note or under any other Loan Document resulting from any change in law, regulation, treaty or regulatory requirement (whether or not having the force of law) in the United States, including, without limitation, any reserve or special deposit requirements, any tax or capital requirements or any change in the compliance of the Holder therewith that, in the determination of the Holder, has the effect of increasing the cost of funding to the Holder or reducing its effective rate of return on capital.

6.14 Indemnities.

(a) The Maker and the Guarantor agree to indemnify and hold harmless the Holder and each of its affiliates and the directors, officers, employees, partners, agents, trustees, administrators, managers, advisors and representatives of it and its affiliates (each, an **"Indemnified Party"**) from and against, any and all claims, damages, losses, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnified Party), incurred by any Indemnified Party or asserted against any Indemnified Party by any person (including the Maker or the Guarantor) other than an Indemnified Party, arising out of, in connection with, or by reason of:

(i) the execution or delivery of this Note or any agreement or instrument contemplated by this Note (including, without limitation, any Loan Document), the performance by the parties thereto of their respective obligations under this Note or any other Loan Document or the consummation of the transactions contemplated by such documents;

(ii) any loan, extension of credit, or proposed use of the proceeds therefrom;

(iii) any actual or alleged presence or release of hazardous materials on or from any property currently or formerly owned or operated by the Maker, the

Guarantor or any subsidiary thereof, or any environmental liability related to the Maker, the Guarantor or any subsidiary thereof in any way; or

(iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Maker or the Guarantor, and regardless of whether any Indemnified Party is a party thereto;

provided that, such indemnity shall not (i) apply to any income or gains of Holder with respect to payments by Maker with respect to this Note or the Convertible Note, Holder's conversion of the Convertible Note or the sale of any shares obtained pursuant to the Convertible Note; or (ii) be available to any Indemnified Party to the extent that such claims, damages, losses, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party.

(b) In addition to any liability or obligation of the Maker or the Guarantor to the Holder under any other provision of this Note, the Maker and the Holder shall indemnify and hold the Holder harmless against any and all losses, claims, costs, damages or liabilities (including any expense or cost incurred in the liquidation and re-deployment of funds acquired to fund or maintain any portion of a loan or advance and reasonable out-of-pocket expenses and legal fees) incurred by the Holder as a result of or in connection with the Maker or the Guarantor's failure to fulfil any of its obligations, including any cost or expense incurred by reason of the liquidation or re-employment in whole or in part of deposits or other funds required by the Holder to fund any bankers' acceptance or letter of credit, or to fund or maintain any loan, as a result of the Maker's or the Guarantor's failure to complete a drawdown or to make any payment, repayment or prepayment on the date required hereunder or specified by it in any notice given hereunder. A certificate from the Holder setting forth the amount or amounts necessary to compensate it for any such loss, claim, cost, damage or liability, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Maker, shall be conclusive absent manifest error.

(c) The Maker and the Guarantor agrees, to the fullest extent permitted by applicable law, not to assert, and hereby waives, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (including, without limitation, any loss of profits or anticipated savings), as opposed to actual or direct damages, resulting from this Note or any Loan Document or arising out of such Indemnified Party's activities in connection herewith or therewith.

6.15 <u>Survival</u>.

The termination of this Note shall not relieve the Maker or the Guarantor from their obligations to the Holder arising prior to such termination, such as obligations arising as a result of or in connection with any breach of this Note, any failure to comply with this Note or the inaccuracy

of any representations and warranties made or deemed to have been made prior to such termination, and obligations arising pursuant to all indemnity obligations contained herein.

The Maker's and the Guarantor's obligations to indemnify the Holder with respect to the expenses, damages, losses, costs, liabilities and other obligations in accordance with Section 6.14 herein shall survive until the later of (i) all applicable statute of limitations periods with respect to actions that may be brought against the Holder or any other indemnified party have run and (ii) 365 days following the entry of a final non-appealable order of a court of competent jurisdiction with respect to actions brought against the Holder or any other Indemnified Party that were initiated prior to the end of the applicable statute of limitations for such actions.

Notwithstanding the foregoing, upon irrevocable payment in full of all principal, interest and other outstanding obligations, Agent will release its security interest in the Collateral.

6.16 Severability. Each provision of this Note shall be severable from every other provision hereof for the purpose of determining the legal enforceability of any specific provision. This Note may be executed and delivered in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same agreement.

[Signature Page Follows]

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

SPRINGBIG HOLDINGS, INC.

By: /s/ Paul Sykes
Name: Paul Sykes
Title: Chief Financial Officer

[*Signature page for Term Note*]

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

EXHIBIT B

Definitions

(a) "Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(b) "Change of Control" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(c) "Collateral" means all present and after acquire property and any proceeds thereof that is subject, or intended to be subject, to the Liens created by any Loan Document.

(d) "Common Stock" means issued and outstanding shares in the capital of an entity.

(e) "Convertible Notes" means the Senior Secured Convertible Promissory Notes delivered pursuant to or in connection with the Purchase Agreement to be issued by the Company bearing interest at the rate of 8% per annum and to be secured pursuant to the Pledge and Security Agreement.

(f) "Default" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

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

(h) "Exempt Issuance" means the issuance of (a) shares of Common Stock, restricted stock units or options issued to consultants, 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) the Common Stock issued upon conversion of the Convertible Notes, (c) securities issued upon the exercise or exchange of or conversion of any securities issued prior to the execution of the Purchase

Agreement, other than the L1 Documents (as defined in the Purchase Agreement) or pursuant to the L1 Debt Settlement Agreement (as defined in the Purchase Agreement), (d) securities issued in connection with any merger, acquisition or strategic transaction approved by a majority of the directors of the Company and the Lead Investor and Lightbank.

(i) "Fundamental Transaction" means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of

or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(j) "Group" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

(k) "Guarantor" means SpringBig, Inc. a Delaware corporation.

(l) "Indebtedness" means: (a) all obligations for borrowed money; (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, current swap agreements, interest rate hedging agreements, interest rate swaps, or other financial products; (c) all obligations or liabilities secured by a lien or encumbrance on any asset of the Maker, irrespective of whether such obligation or liability is assumed; and (d) any obligation guaranteeing or intended to guaranty (whether directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse) any of the foregoing obligations of any other person.

(m) "Lightbank" means Lightbank II, L.P.

(n) "Loan Documents" means this Note, the Pledge and Security Agreement, the Guaranty, the Pari Passu and Agency Agreement, the Transaction Documents (as defined in the Purchase Agreement) and all other agreements (including inter-creditor agreements), documents and instruments required or contemplated to be delivered under this Note, now or hereafter, by the Maker or the Guarantor to the Holder and any other document which, pursuant to the provisions of this Note, is stated to be a Loan Document or is otherwise executed and delivered by the Maker or the Guarantor in connection with the obligations owed to the Holder hereunder. "Loan Document" means any one of them.

(o) "Material Adverse Effect" has the meaning assigned to such term in the Purchase Agreement.

(p) "Obligations" means the Principal, any accrued and outstanding Interest and any other amounts owing hereunder or under any other Loan Document.

(q) "Pari Passu and Agency Agreement" means the pari passu and agency agreement dated on or about the date hereof entered between the Holders (as defined hereunder and under the Convertible Notes) and acknowledged and agreed to by the Maker and the Guarantor.

(r) "Permitted Indebtedness" means (i) Indebtedness evidenced by this Note and the Convertible Notes, (ii) capitalized leases and purchase money security interests for purchases of equipment and assets used in the business in the ordinary course of business, in an aggregate amount outstanding not to exceed $100,000, and (iii) any Indebtedness incurred, issued or outstanding on the Original Issuance Date and set out in Schedule I attached hereto and any refinancing, replacement, exchange, renewal, repayment or extension thereof.

(s) "Permitted Liens" means (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen's Liens, mechanics' Liens and other similar Liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens securing Permitted Indebtedness, and (v) incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, (vii) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under this Note and (viii) any Liens issued or outstanding on the Original Issuance Date and set out in Schedule I attached hereto.

(t) "Principal Market" means any of the OTCQX Best Market, OTCQB Venture Market, New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Select Market, or the Nasdaq Global Market, or any successors of any of these trading platforms or exchanges on which the Common Stock is listed or quoted for trading, as applicable.

(u) "Required Holders" shall mean Holders holding more than 50% of the aggregate then outstanding Obligations, which must include the Lead Investor and Lightbank.

(v) "SEC" means the United States Securities and Exchange Commission or the successor thereto.

(w) "Securities Act" means the Securities Act of 1933, as amended.

(x) "Subject Entity" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(y) "Subsidiary" has the meaning ascribed thereto in the Purchase Agreement.

(z) "Trading Day" means a day on which the Common Stock are traded on a Principal Market for at least 4.5 hours.

January 16, 2024

L1 Capital Global Opportunities
Master Fund
1688 Meridian Ave., Level 6
Miami Beach, Florida 33139
Attn: David Feldman
Email: dfeldman@l1capitalglobal.com

Re: L1 Settlement of Note Facility

Ladies and Gentlemen:

Reference is made to the Securities Purchase Agreement dated as of April 29, 2022, between L1 Capital Global Opportunities Master Fund, a Cayman Island business organization ("Lender") and SpringBig Holdings, Inc., a Delaware corporation ("Borrower"), as heretofore amended (the "Purchase Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement. Pursuant to the Purchase Agreement, Borrower issued to Lender a Senior Secured Original Issue Discount Convertible Promissory Note, in the original principal amount of $11,000,000, dated as of June 14, 2022 (as heretofore amended, the "Note") and a Common Stock Purchase Warrant, dated as of June 14, 2022, originally exercisable for 589,980 shares of the Borrower's Common Stock (as heretofore amended, the "Warrant"), Borrower and Lender entered into a Registration Rights Agreement, dated as of June 14, 2022 (the "Registration Agreement"), Borrower and Lender entered into a Pledge Agreement, dated as of June 14, 2022 (the "Pledge Agreement"), Borrower, Lender and Borrower's wholly-owned subsidiary, SprinBig, Inc. ("Guarantor"), entered into a Security Agreement, dated as of June 14, 2022 (the "Security Agreement") and Lender and Guarantor entered into a Guaranty Agreement, dated as of June 14, 2022 (the "Guaranty" and collectively with the Purchase Agreement, the Note, the Warrant, the Security Agreement, the Pledge Agreement, the Registration Agreement and the other documents and agreements executed and delivered in connection therewith, as heretofore amended, the "Loan Documents").

Lender understands that Borrower will be entering into a financing transaction that is expected to close on or before January 23, 2024 (the "Closing Date"), and, in connection therewith, Borrower will obtain funds to pay Lender in respect of the liabilities, obligations and indebtedness owing by Borrower to Lender under the Purchase Agreement and the Note. In connection therewith, Lender has agreed to accept the amount of $2,879,872 in immediately available funds, plus reimbursement of Lender's legal fees up to $15,000, in full payment and satisfaction of all of the liabilities, obligations and indebtedness owing by Borrower and Guarantor to Lender under the Purchase Agreement and other Loan Documents (the "Payoff Amount"); provided that the Payoff Amount is received on or before 4:00 p.m., eastern time, on the Closing Date.

Upon (A) receipt by Lender by wire transfer of an amount equal to the Payoff Amount to the following account:

BANK:	xxxxxxxxxxxxxx
	xxxxxxxxxxxxxx
	xxxxxxxxxxxxxx
	xxxxxxxxxxxxxx
BIC Code:	xxxxxxxxxx

ACCOUNT NAME:	xxxxxxxxxxxxx
	xxxxxxxxxxxxx
ACCOUNT#:	xxxxxxxxxxxxx

and (B) receipt by Lender of a copy of this letter agreement duly executed by Borrower and Guarantor (the deliveries described in the foregoing clauses (A) and (B), the "Payoff Deliveries"), any and all liens and security interests of Lender in any and all of the property of Borrower, Guarantor and their subsidiaries that secure the obligations under the Purchase Agreement and other Loan Documents shall be deemed to be released and terminated in full and all liabilities, obligations and indebtedness owing by Borrower or Guarantor to Lender under the Purchase Agreement and other Loan Documents shall be deemed to have been satisfied in full. This letter agreement shall no longer be effective if the Payoff Deliveries are not received by Lender at or before 4:00 p.m. (Eastern time) on the Closing Date.

Subject to receipt of all of the Payoff Deliveries at or before the Closing Date (date of such timely delivery, the "Payoff Date"), (i) Lender authorizes Borrower (or its designee) to file the UCC-3 Termination Statements in the form set forth on Exhibit A attached hereto, and (ii) Lender shall deliver to Borrower any other termination statements and lien releases, as applicable, pertaining to any liens and security interests of Lender in any of the property of Borrower, Guarantor or their subsidiaries, as Borrower may reasonably request, in connection with Lender's above-described release and termination of its security interests and liens.

Each of Borrower and Guarantor (collectively, the "Loan Parties"), on behalf of itself, and its respective predecessors, successors, subsidiaries, affiliates, officers, directors, shareholders, employees, partners, members, predecessors, successors, assigns, servicers, representatives, attorneys contractors and agents (collectively, "Borrower Releasors"), hereby irrevocably and unconditionally releases and forever discharges Lender, its predecessors, successors, subsidiaries and affiliates, their respective officers, directors, shareholders, employees, partners, members, servicers, representatives, attorneys contractors, agents, predecessors, successors, assigns, and all persons acting by, through, under, or in concert with any of the aforesaid persons or entities (each a "Lender Released Party" and, collectively, "Lender Released Parties"), or any of them, from and against any and all causes of action, suits, debts, liens, obligations, liabilities, claims, demands, damages, judgments, losses, orders, penalties, costs and expenses, including, without limitation, attorneys' fees, of any kind or nature whatsoever, whether under law, in equity or by statute, known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, which any of the Borrower Releasors now have, own, hold, or claim to have, own, or hold, or at any time heretofore have had, owned, held or claimed to have had, owned, or held against any of the Lender Released Parties arising from, based upon, or related to, whether directly or indirectly (collectively, "Claims"): (i) the loan of funds to Borrower pursuant to the Note ("Loan"); (ii) the Loan Documents; (iii) the collateral for the Loan and other obligations under the Loan Documents; (iv) any and all other agreements, documents or instruments referenced herein or in the Loan Documents or related hereto or thereto; (v) any statement, representation, warranty, act, omission, negligence, or breach of duty, in connection with the negotiation, execution, deliver or performance of the Loan Documents, during the term of the Loan Documents, or otherwise; or (vi) any other theory of liability. Borrower Releasors acknowledge that there is a risk that after the Closing Date, Borrower Releasors may discover, incur, or suffer from Claims which were unknown or unanticipated, including, without limitation, unknown or unanticipated Claims which, if known by Borrower Releasors, may have materially affected Borrower Releasors' decision to execute this Agreement. Borrower Releasors represent and warrant to the Lender Released Parties that Borrower Releasors have not assigned or transferred or purported to assign or transfer any Claim or Claims or any portion thereof or any interest therein, and agree to indemnify, defend, and hold the Lender Released Parties harmless from and against any Claim or Claims based on, or arising out of, whether directly or indirectly, any such assignment or transfer, or purported assignment or transfer.

Lender, on behalf of itself, and its respective predecessors, successors, subsidiaries, affiliates, officers, directors, shareholders, employees, partners, members, predecessors, successors, assigns, servicers, representatives, attorneys contractors and agents (collectively, "Lender Releasors"), hereby irrevocably and unconditionally releases and forever discharges Borrower, Guarantor, their respective predecessors, successors, subsidiaries and affiliates, their respective officers, directors, shareholders, employees, partners, members, servicers, representatives, attorneys contractors, agents, predecessors, successors, assigns, and all persons acting by, through, under, or in concert with any of the aforesaid persons or entities (each a "Borrower Released Party" and, collectively, "Borrower Released Parties"), or any of them, from and against any and all Claims, which any of the Lender Releasors now have, own, hold, or claim to have, own, or hold, or at any time heretofore have had, owned, held or claimed to have had, owned, or held against any of the Borrower Released Parties arising from, based upon, or related to, whether directly or indirectly: (i) the loan of funds to Borrower pursuant to the Note ("Loan"); (ii) the Loan Documents; (iii) the collateral for the Loan and other obligations under the Loan Documents; (iv) any and all other agreements, documents or instruments referenced herein or in the Loan Documents or related hereto or thereto; (v) any statement, representation, warranty, act, omission, negligence, or breach of duty, in connection with the negotiation, execution, deliver or performance of the Loan Documents, during the term of the Loan Documents, or otherwise; or (vi) any other theory of liability. Lender Releasors acknowledge that there is a risk that after the Closing Date, Lender Releasors may discover, incur, or suffer from Claims which were unknown or unanticipated, including, without limitation, unknown or unanticipated Claims which, if known by Lender Releasors, may have materially affected Lender Releasors' decision to execute this Agreement. Lender Releasors represent and warrant to the Borrower Released Parties that Lender Releasors have not assigned or transferred or purported to assign or transfer any Claim or Claims or any portion thereof or any interest therein, and agree to indemnify, defend, and hold the Borrower Released Parties harmless from and against any Claim or Claims based on, or arising out of, whether directly or indirectly, any such assignment or transfer, or purported assignment or transfer.

If any payment or transfer (or any portion thereof) to Lender shall be subsequently invalidated, declared to be fraudulent or a fraudulent conveyance or preferential, avoided, rescinded, set aside or otherwise required to be return or repaid, whether in bankruptcy, reorganization, insolvency or similar proceedings involving the Loan Parties or otherwise, then the obligations purportedly satisfied with such payment or transfer shall immediately be reinstated, without need for any action by any person, and shall be enforceable against the Loan Parties and their successors and assigns as if such payment had never been made (in which case this letter agreement shall in no way impair the claims of Lender, the Lenders, and their respective participants with respect to such payment or transfer).

This letter may be signed in multiple counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. One or more counterparts of this letter may be delivered by facsimile or other electronic signature, with the intention that they shall have the same effect as an original counterpart thereof. Section 5.9 of the Purchase Agreement is hereby incorporated herein and made a part hereof, *mutatis mutandis*.

Very truly yours,

L1 Capital Global Opportunities Master Fund

By: *<u>/s/ David Feldman</u>*

Its: Portfolio Manager

Agreed to by:

SpringBig Holdings, Inc.

By: *<u>/s/ Paul Sykes</u>*

Its: Chief Financial Officer

SpringBig, Inc.

By: *<u>/s/ Paul Sykes</u>*

Its: Chief Financial Officer

NOTE PURCHASE AGREEMENT

This Note Purchase Agreement (this "Agreement") is dated as of January 23, 2024, between SpringBig Holdings, Inc., a Delaware corporation (the "Company"), Shalcor Management Inc., an Alberta corporation ("Lead Investor"), and the other purchasers identified on the signature page hereto (including the Lead Investor, and together with their respective successors and assigns, each a "Purchaser" and collectively, the "Purchasers").

WHEREAS, subject to the terms and conditions set forth in this Agreement (and, solely with respect to the Secured Convertible Promissory Note, pursuant to an exemption from the registration requirements of Section 5 of the Securities Act contained in Section 4(a)(2) thereof and/or Rule 506(b) thereunder), the Company desires to issue and sell to the Purchasers, and the Purchasers, severally and not jointly, desire to purchase from the Company, Secured Convertible Promissory Notes and Secured Term Promissory Notes of the Company as more fully described in this Agreement.

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

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the words and terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"Action" shall have the meaning ascribed to such term in Section 3.1(k).

"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.

"Anti-Corruption Laws" means all laws concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and the anti-bribery and anti-corruption laws and regulations of those jurisdictions in which the Loan Parties do business.

"Anti-Money Laundering Laws" means all laws concerning or relating to terrorism or money laundering, including, without limitation, the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the USA PATRIOT Act and the Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5332 and 12 U.S.C. §§ 1818(s), 1820(b) and §§ 1951-1959) and the rules and regulations thereunder, and any law prohibiting or directed against the financing or support of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B).

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

"Business" shall have the meaning ascribed to such term in Section 3.1(dd).

"Cannabis Law" means any law that is applicable to the Maker or the Guarantor due to the Business involving Marker's work with parties in the legally regulated cannabis business.

"Closing" means each closing of the purchase and sale of the Notes pursuant to Section 2.1(a).

"Closing Date" means the Trading Day on which (i) all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to each Purchaser's obligations to pay the applicable Subscription Amount and (ii) the Company's obligations to deliver the Notes to be issued and sold, in each case, have been satisfied or waived, but in no event later than the second Trading Day following the date on which the Company gives notice to the Purchasers that all conditions of such Closing have been met other than payment and delivery of the Closing deliverables required by this Agreement.

"Collateral" means all present and after acquire property and any proceeds thereof that is subject, or intended to be subject, to the Liens created by any Loan Document.

"Collateral Locations" shall have the meaning ascribed to such term in Section 3.1(ee).

"Common Stock" means the common stock of the Company, par value $0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Compliance Certificate" has the meaning ascribed thereto in the Term Note.

"Company" has the meaning given to such term in the recitals hereto.

"Convertible Notes" means the 8% Senior Secured Convertible Notes to be issued to the Purchasers by the Company, in the form of <u>Exhibit A</u> attached hereto, which bear interest at the rate of 8% per annum and shall be secured pursuant to the Pledge and Security Agreement.

"Conversion Shares" means the shares of Common Stock into which the Convertible Notes may be converted from time to time.

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

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

"Fundamental Transaction" shall have the meaning defined in the Notes.

"GAAP" shall have the meaning ascribed to such term in Section 3.1(i).

"Guarantor" means SpringBig, Inc. a Delaware corporation.

"Guaranty Agreement" means the guaranty agreement for the Notes executed by each Subsidiary of The Company in the form attached hereto as Exhibit B.

"Indebtedness" means with respect to the Company and each of its Subsidiaries (x) any liabilities for borrowed money or amounts owed in excess of $250,000 (other than trade accounts payable incurred in the ordinary course of business consistent with past practice), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of $250,000 due under leases required to be capitalized in accordance with GAAP.

"Intellectual Property" means all of the following in any jurisdiction throughout the world: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all U.S. and foreign patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all trademarks, service marks, brand names, certification marks, trade dress, logos, trade names, domain names, assumed names and corporate names, together with all colorable imitations thereof, and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all trade secrets under applicable state laws and the common law and know-how (including formulas, techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (e) all computer software (including source code, object code, diagrams, data and related documentation), and (f) all copies and tangible embodiments of the foregoing (in whatever form or medium).

"Intellectual Property Rights" has the meaning set forth in Section 3.1(q).

"Intercreditor and Collateral Agency Agreement" means the Intercreditor and Collateral Agency Agreement dated on or about the date hereof entered between the Purchasers (as defined hereunder and under the Convertible Notes), Lead Investor, as agent for the ratable benefit of the Purchasers (in such capacity, the "Agent") and acknowledged and agreed to by the Company and the Guarantor, in the form attached hereto as Exhibit C.

"L1 Debt Settlement Agreement" means a binding written agreement among the Company and L1 to settle all outstanding indebtedness under the L1 Documents and deliver the Payoff and Release Documents in exchange for aggregate payment of no more than $3,000,000.

"L1 Documents" means, collectively, the Securities Purchase Agreement dated as of April 29, 2022 (as amended, the "Purchase Agreement"), between the Company and L1 Capital Global Opportunities Master Fund ("L1"), the Senior Secured Original Issue Discount Convertible Promissory Note dated as of June 14, 2022, as amended, issued by the Company to L1 (the "L1 Note"), and all of the other Transaction Documents (as defined in the L1 Purchase Agreement).

"Landlord Waiver" shall have the meaning ascribed to such term in Section 3.1(ee).

"Lead Investor" shall mean Shalcor Management Inc.

"Lightbank" means Lightbank II, L.P.

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

"Loan Documents" has the meaning ascribed thereto in the Term Note.

"Material Adverse Effect" shall have the meaning assigned to such term in Section 3.1(d).

"Material Agreements" shall have the meaning ascribed to such term in Section 3.1(gg).

"Material Permits" shall have the meaning ascribed to such term in Section 3.1(o).

"Notes" means, collectively, the Convertible Notes and the Term Notes.

"Note Conversion Price" means, $0.15 subject to adjustment as provided in the Convertible Notes.

"Payoff and Release Documents" means the payoff letter, lien release and other documents and instruments necessary to evidence the payoff, termination and release of the L1 Documents and all indebtedness thereunder and all Liens on the assets of the Company and its Subsidiaries evidenced thereby.

"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.

"Pledge and Security Agreement" means the security agreement of the Company of the Company and Lead Investor, as collateral agent for the holders of Convertible Notes and Term Notes, in the form of Exhibit D, providing the Purchasers with a first lien on all of the assets of the Company and pledging the outstanding common stock and other equity instruments of each Subsidiary listed therein.

"Principal Market" means any of the OTCQX Best Market, OTCQB Venture Market, New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Select Market, or the Nasdaq Global Market, or any successors of any of these trading platforms or exchanges on which the Common Stock is listed or quoted for trading, as applicable.

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

"Purchaser" and "Purchasers" have the respective meanings contained on the first paragraph of this Agreement, and each Purchaser is identified on its respective signature page.

"Registration Rights Agreement" means the registration rights agreement by and among with Company and the Purchasers dated the date of this Agreement, in the form of which is attached as Exhibit E.

"Regulation FD" means Regulation FD promulgated by the SEC pursuant to the Exchange Act, as such Regulation may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such Regulation.

"Required Approvals" shall mean the consent, waiver, authorization or order of, or the giving of any notice to, or the making of any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.4 of this Agreement, (ii) application(s) to the applicable Principal Market for the listing of the Shares for trading or quoting of the Shares for trading, as applicable, thereon in the time and manner required thereby, (iii) filings necessary to perfect the Liens in favor of the Purchasers under the Pledge and Security Agreement, and (iv) such filings as are required to be made under the Securities Act and applicable state securities laws.

"Resale Registration Statement" means any registration statement on Form S-1 or S-3, as applicable, as contemplated in the Registration Rights Agreement.

"Rule 144" means Rule 144 promulgated by the SEC 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 SEC having substantially the same purpose and effect as such Rule.

"SEC" means the United States Securities and Exchange Commission.

"SEC Reports" shall have the meaning ascribed to such term in Section 3.1(j).

"Sanctioned Country" means, at any time, a country or territory that is the subject or target of any Sanctions that broadly prohibit dealings with that country or territory (which, as of the Effective Date, include Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in OFAC's Specially Designated Nationals and Blocked Persons List, OFAC's Sectoral Sanctions Identification List, and any other Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council or other relevant sanctions authority, (b) a Person that resides in, is organized in or located in, or has a place of business in, a country or territory named on any list referred to in clause (a) of this definition or a country or territory that is designated as a "Non-Cooperative Jurisdiction" by the Financial Action Task Force on Money Laundering, or whose subscription funds are transferred from or through any such jurisdiction

(each of the foregoing in this clause (b), a "Sanction Target"), or a Person that owns 50% or more of the Equity Interests of, or is otherwise controlled by, or is acting on behalf of, one or more Sanction Targets, (c) any Person with whom or with which a U.S. Person is prohibited from dealing under any of the Sanctions, or (d) any Person owned or controlled by any Person or Persons described in clause (a) or (b).

"Sanctions" means Requirements of Law concerning or relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC, the U.S. Department of State, or other relevant sanctions authority.

"Securities Act" means the Securities Act of 1933, as amended.

"Shares" means the Common Stock of the Company issuable upon conversion of the Convertible Notes.

"Subject Entity" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

"Subscription Amounts" means, as to each Purchaser, the aggregate amount to be paid for the Notes purchased hereunder as specified below the Purchaser's name on the signature page of this Agreement and next to the heading "Subscription Amount," in United States dollars and in immediately available funds.

"Subsidiary" means with respect to any entity at any date, any direct or indirect corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity that is a "significant subsidiary" of the Company (as such term is defined in Rule 1-02 of Regulation S-X under the Securities Act) and of which (A) more than 50% of (i) the outstanding capital stock having (in the absence of contingencies) ordinary voting power to elect a majority of the board of directors or other managing body of such entity, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such entity, or (B) is under the actual control of the Company.

"Term Notes" means the 12% Senior Secured Term Notes to be issued to the Purchasers by the Company, in the form of Exhibit F attached hereto, which bear interest at the rate of 12% per annum and shall be secured pursuant to the Pledge and Security Agreement.

"Trading Day" means a day on which the Principal Market is open for trading.

"Transaction Documents" means this Agreement, the Notes, the Pledge and Security Agreement, the Guaranty Agreement, the Registration Rights Agreement and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means Continental Stock Transfer & Trust Company and any successor

transfer agent of the Company.

ARTICLE II.
PURCHASE AND SALE

2.1 Purchase and Sale. The Purchasers, severally and not jointly, agree to purchase from the Company up to a total of $1,600,000 of Term Notes and up to a total of $6,400,000 of Convertible Notes, in each case in exchange for cash with the amount of each of each Purchaser's Subscription Amount, reflected on its respective signature page:

2.2 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein each Purchaser shall pay to the Company via wire transfer of immediately available funds equal to such Purchaser's Subscription Amount as set forth on the signature page hereto executed by such Purchaser, and the Company shall deliver to each purchaser such Purchaser's respective Convertible Note and Term Note as determined pursuant to Section 2.1. Upon satisfaction of the conditions set forth in Sections 2.3 and 2.4, the Closing shall occur at the offices of the Company or such other location as the parties shall mutually agree.

2.3 Deliveries.

(a) On or prior to the Closing Date except as provided below, the Company shall execute and deliver or cause to be delivered on behalf of each Purchaser the following:

(i) an original Convertible Note in the name of each Purchaser in the original principal amount equal to such Purchaser's Convertible Note Subscription Amount;

(ii) an original Term Note in the name of each Purchaser in the original principal amount equal to such Purchaser's Term Note Subscription Amount;

(iii) to the Lead Investor, payment of the commitment fee in immediately available funds, in an amount equal to 1.5% of the total Convertible Note Subscription Amounts plus 1.5% of the total Term Note Subscription Amounts; provided, however, that the Lead Investor may elect in a written notice given to the Company to reduce its Convertible Note Subscription Amount and Term Note Subscription Amount by the amount of such fee;

(iv) the Registration Rights Agreement;

(v) a Pledge and Security Agreement providing the Agent, as collateral agent for the Purchasers, with a first lien security interest in the assets of the Company including its Subsidiaries and pledging the outstanding common stock and other equity instruments of each Subsidiary executed by the Company and each Subsidiary;

(vi) a Guaranty Agreement executed by each Subsidiary of the

Company;

(vii) executed copies of the Payoff and Termination Documents;

(viii) an executed copy of the Intercreditor and Collateral Agency Agreement;

(ix) an executed copy of the L1 Debt Settlement Agreement, in a form agreeable to the Lead Investor;

(x) satisfactory evidence that there are no Liens affecting the Collateral and that the Purchaser maintains, subject to the Intercreditor and Collateral Agency Agreement, a first-ranking security interest in the Collateral;

(xi) certificates of insurance evidencing the insurance required herein. Such certificates to be satisfactory in form and substance to the Lead Investor;

(xii) the Company shall have provided a Compliance Certificate to the Purchaser;

(xiii) the Company shall have paid to the Lead Investor, or made arrangements satisfactory to the Lead Investor for the payment of, all fees and expenses (including the Lead Investor's legal expenses) in connection with the transactions contemplated by the Loan Documents; and

(xiv) delivery of a secretary's certificate by the Company certifying (i) constating documents, (ii) authorizing board resolutions; (iii) incumbency; and (iv) a bring down of the Company's covenants, representations and warranties contained in this Agreement and updated disclosure schedules to the extent necessary.

(b) On or prior to the Closing Date, each Purchaser shall cause to be delivered the Purchaser's Subscription Amounts by wire transfer of immediately available funds.

2.4 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on such Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein);

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

(iii) the delivery by the Purchasers of their respective Subscription

Amounts.

(b) The respective obligations of each Purchaser hereunder in connection with the Closing are subject to the following conditions being met:

(iv) the accuracy in all material respects when made and on such Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein);

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

(vi) the delivery by the Company of the items set forth in Section 2.3(a) of this Agreement;

(vii) the absence of any Material Adverse Effect with respect to the Company;

(viii) all necessary regulatory approvals (if any) required for the entering into of this Agreement and the completion of the transactions contemplated under this Agreement shall have been obtained prior to the Closing Date;

(ix) the Purchaser shall be satisfied that all regulatory approvals required in connection with the Business and the execution, delivery and performance of the Loan Documents shall have been obtained;

(x) the Purchaser and the Purchasers (as defined in the Convertible Note) have entered into the Intercreditor and Collateral Agency Agreement, such agreement to be satisfactory to the Purchaser in its sole discretion;

(xi) no order ceasing or suspending trading in the Conversion Shares on any stock exchange shall have been issued and no proceeding for such purposes shall be pending or threatened;

(xii) the Company shall have delivered a certificate of corporate status and a certificate of the issued and outstanding Common Stock from the Transfer Agent on the Closing Date;

(xiii) there shall not exist any binding commitment which respect to a Change of Control (as defined in the Term Note) of the Company; and

(xiv) at least two business days before the Closing Date, the Company shall have delivered to each Purchaser wire transfer instructions for the payment of this Subscription Amount.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES.

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchasers as follows:

(a) Authorization. The Company and the Guarantor have the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and the other Transaction Documents. This Agreement and the other Transaction Documents have been (or upon delivery will have been) duly executed by the Company and the Guarantor, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company and the Guarantor enforceable against both the Company and the Guarantor in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) No Conflicts. The execution, delivery and performance by the Company and the Guarantor of this Agreement and the other Transaction Documents will not (i) conflict with or violate any provision of the Company's or any Subsidiary's operative or other organizational or charter documents, or (ii) constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement or other instrument to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(c) Subsidiaries. All of the direct and indirect Subsidiaries of the Company are set forth in the SEC Reports. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(d) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective Certificate of Incorporation, Bylaws or other organizational or charter

documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(e) Authorization; Enforcement.

(i) The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the Guarantor and the consummation by each of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and the Guarantor and no further action is required by the Company or the Guarantor in connection herewith or therewith other than in connection with the Required Approvals. Subject to obtaining the Required Approvals, this Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and the Guarantor, as applicable, and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company and the Guarantor enforceable against the Company and the Guarantor, as applicable, in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(ii) With respect to Subsidiary Guaranty, each of the Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by such agreement and otherwise to carry out its obligations thereunder. The execution and delivery of the Subsidiary Guaranty and the consummation by the Company of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company, and no further action is required by the respective Subsidiary in connection therewith. The Subsidiary Guaranty has been (or upon delivery will have been) duly executed by the respective Subsidiaries and, when delivered in accordance with the terms thereof, will constitute the valid and binding obligation of the respective Subsidiary enforceable against such Subsidiary in accordance with its terms, except (A) as listed by general equitable principles and applicable bankruptcy, insolvency,

reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (B) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (C) insofar as indemnification and contribution provisions may be limited by applicable law.

(f) No Conflicts. The execution, delivery and performance by the Company and the Guarantor of this Agreement and the other Transaction Documents to which the Company or the Guarantor is a party, the issuance and sale of the Notes and the consummation by the Company and the Guarantor of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's Certificate of Incorporation, Bylaws or other organizational or charter documents, or (ii) constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement or other instrument to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(g) Issuance of the Notes. The Notes are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The shares of Common Stock of the Company, when issued upon conversion of the Convertible Notes, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. At the Closing, the Company shall reserve from its duly authorized Common Stock a number of shares of Common Stock issuable pursuant to the Convertible Notes equal to the amount set forth in Section 4.9. Assuming the accuracy of the representations of the Purchasers in Section 3.2 of this Agreement and subject to the filings described in Section 4.8, the Shares will be issued in compliance with all applicable federal and state securities laws.

(h) Capitalization.

(i) The capitalization of the Company is as set forth in the SEC Reports. Except as set forth on Schedule 3.1(h), the Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth in the SEC Reports, as a result of the purchase and sale of the Notes there are no outstanding options, warrants, rights to subscribe to, calls or commitments relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for

or acquire, any shares of Common Stock or the capital stock of or any Subsidiary, or contracts or arrangements by which the Company or any Subsidiary is bound to issue additional shares of Common Stock or capital stock of any Subsidiary.

(ii) Following each Closing, except as reflected on Schedule 3.1(h) or the Company's most recent Annual Report on Form 10-K, there will be no outstanding options, warrants, rights to subscribe to, calls or commitments relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of capital stock of the Company or any Subsidiary, or contracts, commitments by which the Company or any Subsidiary is bound to issue additional shares of capital stock of the Company or any Subsidiary.

(iii) There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts or commitments by which the Company or any Subsidiary is bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company and the Subsidiaries are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities.

(i) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, registration statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act including pursuant to Section 13(a) for the year preceding the date hereof and as of the Closing Date (or such shorter period as the Company was required by law or regulation to file such documents) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as disclosed on Schedule 3.1(i), the financial statements of the Company included in the SEC Reports have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP and are subject to normal year-end adjustments, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal year-end audit adjustments.

(j) Material Changes or Developments. Since the date of the latest audited

financial statements included within the SEC Reports, and other than the matters addressed by the L1 Settlement Agreement, (i) there has been no event, occurrence or development that has had a Material Adverse Effect, (ii) the Company has not altered its method of accounting, (iii) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (iv) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company equity incentive plans.

(k) Litigation. Except as set forth on Schedule 3.1(k), there is no action, suit, notice of violation, proceeding or investigation, inquiry or other similar proceeding involving the Company or any Subsidiary by any federal or state government unit pending and there have been no discussions with the SEC or other state or federal regulators in connection with the matters contemplated in the Registration Statement other than copies of SEC comment letters and responses, which have been provided to the Purchasers or, to the knowledge of the Company, threatened against or affecting the Company or any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the issuance of the Notes; (ii) exceeds $50,000 in potential damages or (iii) has had or reasonably could be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any material Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. To the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company or any current or former director or officer of the Company. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Securities Act, and the Company has no reason to believe it will do so in the future.

(l) Compliance. Except as set forth on Schedule 3.1(l), and after giving effect to the L1 Debt Settlement Agreement, neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any Indebtedness, indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived) the Company, (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of either the Company or any of the Subsidiaries, which could reasonably be expected to result in a Material Adverse Effect. None of

the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any Subsidiaries is a party to a collective bargaining agreement. To the knowledge of the Company, no executive officer or key employee of the Company or any Subsidiary is in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are, to the Company's knowledge, in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices including sexual harassment and discrimination, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(n) Environmental Laws. The Company and its Subsidiaries (i) are in material compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

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

(p) Title to Assets. The Company and its Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of such company, in each case free and clear of all Liens, except for Permitted Liens (as defined in the Term Note), except as set forth on Schedule 3.1(p). Any real property and facilities held under lease by the Company or its Subsidiaries are held by them under valid, subsisting and enforceable leases with which such companies are in compliance.

(q) Intellectual Property. The Company and its Subsidiaries have, or have

rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could reasonably be expected to have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of the Company nor any Subsidiary has received a notice (written or otherwise) that any of the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights.

(r) Insurance. The Company and its Subsidiaries are in compliance with requirements relating to insurance set out in the Notes and are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are customary in the businesses in which the Company and its Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the aggregate Subscription Amount.

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

(t) Sarbanes-Oxley; Internal Accounting Controls. Except as disclosed in the SEC Reports, the Company and the Subsidiaries are in compliance in all material respects with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof and as of each Closing Date.

(u) Certain Fees. Except for fees payable to Roth Capital Partners, Inc., no commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents and to be entered into by the Purchasers and the Company.

(v) Registration Rights. No Person has any right to cause the Company or any Subsidiary to affect the registration under the Securities Act of any securities of the Company or any Subsidiary, except the Purchasers and except as otherwise disclosed on Schedule 3.1(v).

(w) Listing and Maintenance Requirements. The Common Stock of the Company is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the SEC is contemplating terminating such registration. The common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation, and the Company is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(x) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income, value added, and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply.

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

(z) Private Placement. Assuming the accuracy of each Purchaser's representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Notes to each Purchaser as contemplated hereby.

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

(bb) No Disqualification Events. With respect to the Notes to be offered and sold hereunder in reliance on Rule 506(b) under the Securities Act, none of the Company affiliated issuer, any director, executive officer, other officer the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in

Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale, nor any Person, including a placement agent, who will receive a commission or fees for soliciting purchasers (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to each Purchaser a copy of any disclosures provided thereunder.

(cc) Seniority. As of the Closing Date, except as disclosed on Schedule 3.1(cc) no Indebtedness or other claim against the Company will be senior to the Notes in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(dd) Business. The Company carries on its business as described in its SEC Reports (the "Business").

(ee) Location of Collateral. The Collateral of the Company is located at the location set out in Schedule 3.1(ee) or such other addresses of which the Company has notified the Purchaser in writing and for which the Company has taken all necessary steps to maintain the Purchaser's first-ranking security interest in the Collateral (collectively, the "Collateral Locations").

(ff) Pension Plans. Neither the Maker nor the Guarantor sponsors, maintains, administers, contributes to nor has any Maker or Guarantor contributed to, or has any obligation or liability in respect of, a defined benefit pension plan or a "multi-employer pension plan" under the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import ("ERISA"), and regulations thereunder, in each case, as in effect from time to time. All contributions required to be remitted to any plan governed by ERISA have been remitted on or prior to when due.

(gg) Material Agreements. A list of all material agreements and amendments, restatements, supplements or other modifications thereto, is set out on Schedule 3.1(gg) hereto, copies of which, if requested, have been provided to the Purchaser (the "Material Agreements"). There is in existence no default under any Material Agreement, the breach of which could reasonably be expected to cause a Material Adverse Change.

(hh) Solvency. After completion of and giving effect to the closing of the transactions contemplate by this Agreement, neither the Company nor the Guarantor will be (i) a bankrupt, (ii) for any reason unable to meet its obligations as they generally become due, (iii) not paying its current obligations in the ordinary course of business as they generally become due, or (iv) a Person whose aggregate property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient, to enable payment of all of its obligations, due and accruing due.

(ii) Cannabis Law Compliance. The Maker and the Guarantor and the operation of their business, have been and are being conducted in compliance with Cannabis Laws applicable to the Business, and none of the Maker or the Guarantor, or officers and employees thereof have taken any action, or to Maker's knowledge failed to take any action, which could reasonably be expected to result in any material adverse charge or sanction under any Cannabis Law applicable to the Business.

(jj) Anti-Money Laundering, Anti-Corruption and Sanctions Laws;

(i) Neither of Maker or Guarantor, nor, to the knowledge of any Maker or Guarantor, any of their respective directors, officers, or employees or Affiliates, (i) is a Sanctioned Person or currently the subject or target of any Sanctions, (ii) has assets located in a Sanctioned Country, (iii) conducts any business with or for the benefit of any Sanctioned Person, (iv) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, (v) is a "Foreign Shell Bank" within the meaning of the USA Patriot Act, i.e., a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision, or (vi) is a Person that resides in or is organized under the laws of a jurisdiction designated by the United States Secretary of the Treasury under Section 311 or 312 of the USA Patriot Act as warranting special measures due to money laundering concerns. Each of Maker and Guarantor has implemented and maintains in effect policies and procedures designed to ensure compliance by it and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws and Anti-Money Laundering Law. Each of Maker and Guarantor is in compliance with all Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws. Each of Maker and Guarantor and each Affiliate, officer, employee or director acting on behalf thereof (and is taking no action that would result in any such Person not being) in compliance with (A) all applicable OFAC rules and regulations, (B) all applicable United States of America, Canadian, and all other internationally respected national autonomous sanctions, embargos and trade restrictions and (C) all applicable provisions of the USA Patriot Act. In addition, neither Maker nor Guarantor is engaged in any kind of activities or business of or with any Person or in any country or territory that is subject to any sanctions administered by OFAC, Canada or the United Nations.

(ii) Neither Maker nor Guarantor nor, to their knowledge, any of their respective directors, officers, employees, or any other Person acting on their behalf, has offered, promised, paid, given or authorized the payment or giving of any money or other thing of value, directly or indirectly, to or for the benefit of any Person, including without limitation, any employee, official or other Person acting on behalf of any Governmental Authority, or otherwise engaged in any activity that violates any Anti-Corruption Law.

(iii) Neither Maker nor Guarantor nor, to their knowledge, any of their respective directors, officers, employees, or any other Person acting on their

behalf has engaged in any activity that would reasonably be expected to breach any Anti-Corruption Laws.

(iv) To Maker's and Guarantor's knowledge, there is no pending or threatened action, suit, proceeding or investigation before any court or other Governmental Authority against either of them or any of their respective directors, officers, employees or other Person acting on its behalf that relates to a potential violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

3.2 Representations and Warranties of the Purchasers. Each Purchaser hereby represents and warrants as of the date hereof and as of each Closing Date to the Company as follows:

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

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

(c) Purchaser Status. At the time the Purchaser was offered the Notes, it was, and as of the date hereof it is, an accredited investor within the meaning of Rule 501 under the Securities Act. The Purchaser is not subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1) under the Securities Act (a "Disqualification Event").

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

(e) Access to Information. The Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded, subject to Regulation FD, (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Notes and the merits and risks of investing in the Notes; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possess or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. The Purchaser acknowledges and agrees that neither the Company nor anyone else has provided the Purchaser with any information or advice with respect to the Notes nor is such information or advice necessary or desired.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Removal of Legends.

(a) The applicable Notes and Conversion Shares may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Notes or Conversion Shares other than pursuant to an effective Resale Registration Statement or Rule 144, to the Company or to an Affiliate of each Purchaser, the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Notes or Conversion Shares under the Securities Act.

(b) Each Purchaser agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Notes or Conversion Shares in the following form:

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE

IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

(c) Certificates evidencing the Conversion Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) following any sale of such Conversion Shares pursuant to Rule 144, when available (assuming cashless exercise of the Warrants), or (ii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall at its expense cause its counsel to issue a legal opinion to the Transfer Agent to effect the removal of the legend hereunder, subject to compliance with the Securities Act and/or Rule 144, when available. For the avoidance of doubt the Company shall pay all costs associated with such opinions. If all or any portion of a Note is converted at a time when there is an effective Resale Registration Statement to cover the resale of the Shares or the Conversion Shares, or if such Conversion Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information requirements of Rule 144(c) and without volume or manner of sale restrictions or if such legend is not otherwise required under applicable requirements of the Securities Act (including Sections 4(a)(1) or 4(a)(7), judicial interpretations and pronouncements issued by the staff of the SEC including what is known as Section 4(a)(1½)) then such Conversion Shares shall be issued free of all legends. For avoidance of doubt, the Company agrees that after the requisite holding period to comply with Rule 144, the legend may be removed under Rule 144 of the Securities Act, assuming the holder satisfies the requirements of Rule 144. Certificates for Conversion Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to such Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by the Purchaser.

(d) In the event any Purchaser shall request delivery of unlegended shares as described in this Section 4.1 and the Company is required to deliver such unlegended shares and such request is not in violation of United States securities laws, such Purchaser shall pay all fees and expenses associated with or required by the legend removal and/or transfer including but not limited to legal fees, transfer agent fees and overnight delivery charges and taxes, if any, imposed by any applicable government upon the issuance of Common Stock.

4.2 Furnishing of Public Information. Until the earliest of the time that no Purchaser owns any Notes or Conversion Shares, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act as if it were subject to Section 13(a), and provide notice to its stockholders required by applicable state law, even if the Company is not then subject to the reporting requirements of the Exchange Act.

4.3 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2(a)(1) of the Securities Act)

that would be integrated with the offer or sale of the Notes for purposes of the rules and regulations of the Principal Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.4 Securities Laws Disclosure; Publicity. The Company shall, within the time required by applicable laws following the date of execution of this Agreement, issue a press release announcing the entry into the Agreement, which press release shall be subject to the prior review and approval of the Lead Investor and Lightbank. The Company shall, within the time required by applicable laws following the date of execution of this Agreement, file a Current Report on Form 8-K with the SEC disclosing the material terms of this Agreement, including the forms of Transaction Documents as exhibits thereto. From and after the filing of the Form 8-K as provided in the preceding sentence, the Company represents to each Purchaser that it shall have publicly disclosed all material, non-public information delivered to such Purchaser by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. The Company, on the one hand, and the Lead Investor and Lightbank, on the other hand, shall consult with each other in issuing any press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of the Lead Investor and Lightbank, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser or include the name of any Purchaser in any filing with the SEC or any regulatory agency or Principal Market, without the prior written consent of such Purchaser, except (a) to the extent such disclosure is required by law or Principal Market regulations or (c) is required in a Resale Registration Statement covering the Shares and the Conversion Shares.

4.5 Use of Proceeds. The Company shall use the net proceeds from the sale of the Notes hereunder to repay the amounts owing under the L1 Documents (but not more than $3,000,000 of the proceeds may be used for this purposes), and then for working capital, and/or general corporate purposes, and shall not use such proceeds: (a) for the redemption of any Common Stock or other securities as opposed to prepayments which are required, (b) in violation of FCPA or OFAC regulations, or to lend money, give credit, or make advances to any officers, directors, employees or affiliates of the Company, except for routine travel advances or (c) for the purchase of real estate.

4.6 Reservation of Common Stock.

(a) Prior to the Closing, as applicable, the Company shall reserve and keep available at all times in favor of each Purchaser a number of shares of Common Stock equal to the 150% of the number of Shares issuable upon conversion of the Convertible Notes as of the Closing Date (the "Required Minimum").

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use its all commercially reasonable efforts to amend the Company's Certificate of Incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 30th day after such date.

4.7 Equal Treatment of Purchasers. Except as otherwise provided for in this Agreement and the priority repayment of the Term Notes contemplated under Section 1.4 (Mandatory Repayment) of the Term Notes and the Convertible Notes, no consideration (including any modification of any Transaction Document) shall be offered or paid to any Purchaser to amend or consent to a waiver or modification of any provision of the Transaction Documents unless the same consideration is also offered to all of the Purchasers. Further, the Company shall not make any payment of principal or interest on the Notes in amounts which are disproportionate to the respective principal amounts outstanding on the Notes at any applicable time. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Notes or otherwise.

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

4.9 Conversion and Exercise Procedures. The forms of Conversion Notice included in the Notes set forth the totality of the procedures required of each Purchaser in order to convert the Note. No additional legal opinion, other information or instructions shall be required of each Purchaser to convert its Notes. Without limiting the preceding sentences, no ink-original Conversion Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Conversion Notice form be required in order to convert the Notes. The Company shall honor conversions of the Notes and shall deliver Conversion Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.10 Maintenance of Property. The Company shall keep all of its property, which is necessary or useful to the conduct of its business, in good working order and condition, ordinary wear and tear excepted.

4.11 Preservation of Corporate Existence. Following the date of this Agreement, the Company shall preserve and maintain its corporate existence, rights, privileges and franchises in the jurisdiction of its incorporation, and qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is necessary in view of its business or operations and where the failure to qualify or remain qualified might reasonably have a Material Adverse Effect

upon the Company taken as a whole.

4.12 Operation of Business. As long as any Notes are outstanding the Company shall operate its business in the ordinary course consistent with past practices.

4.13 Acknowledgment of Dilution. This Agreement and the Transaction Documents have been negotiated on an arms-length basis, and each party has retained counsel selected by it. The Company acknowledges that the issuance of the Notes may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligations to issue the Conversion Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.14 Subsequent Registrations. If as result of an SEC Staff policy, rule or regulation the Company is unable to register all of a Purchaser's Registrable Notes (as defined in the Registration Rights Agreement), then not later than 30 days (or such later time as is required by the Staff of the SEC or any rule of the SEC) after any Resale Registration Statement filed pursuant to the Registration Rights Agreement is declared effective by the SEC, the Company shall file another Resale Registration Statement including all or a portion of the Purchaser's Registrable Securities and comply with the terms and conditions set forth in the Registration Rights Agreement. This covenant shall remain in effect, and the Company shall continue to file subsequent Resale Registration Statements and comply with the terms and conditions set forth in the Registration Rights Agreement in connection with each such filing until all of each Purchaser's Registrable Notes shall have been registered.

ARTICLE V.
MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by the Purchasers or the Company, by written notice to the Company or the Purchasers, as applicable, if the Closing has not been consummated on or before three months from the date of this Agreement; provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. Except as expressly set forth below and in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered to the Company and any exercise notice delivered by any Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Notes to the Purchasers. Upon the Closing, the Company agrees to pay counsel for the Lead

Investor's reasonable legal fees, not to exceed $, plus applicable taxes, together with reasonable costs including those necessary to provide the Purchaser with a lien on all of the assets of the Company.

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

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via email at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via email at the email address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second Trading Day following the date of transmission, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto unless changed by a party.

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

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

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company_may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchaser. Each Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Notes, provided that such transferee agrees in writing to be bound, with respect to the transferred Notes, by the provisions of the Transaction Documents that apply to such Purchaser.

5.8 No Third-Party Beneficiaries. Except as provided below, this Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in this Section 5.8. Roth Capital Partners, LLC ("Roth") is acting as placement agent for this offering. As such, Roth will be a beneficiary of all representations and

warranties by the issuer. Additionally, affiliates of Roth will be investing in the offering at the same terms and same price as all other investors.

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

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Notes.

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

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or

substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

5.14 Replacement of Notes. If any Note is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new Note, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction without requiring the posting of any bond.

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

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

5.17 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions

contemplated by the Transaction Documents. Except as provided in the Pledge and Security Agreement, each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. The Collateral Agent, as defined in the Pledge and Security Agreement, has been authorized to take actions under the Pledge and Security Agreement solely because the Company wants enforcement of the Pledge and Security Agreement to be consistent. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

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

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

5.20 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

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

5.22 Usury. the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim that the loans evidenced by the Notes are usurious, and it will resist any and all efforts to be compelled to take the benefit or advantage of usury laws wherever enacted, now or at any time hereafter in force, in connection with any Action or Proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is

expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law.

(Signature Pages Follow)

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

COMPANY:

SpringBig Holdings, Inc.

By: /s/ Paul Sykes__________________
Name: Paul Sykes
Title: Chief Financial Officer

Address for Notice:
621 NW 53rd Street, Ste. 260
Boca Raton, Florida 33487

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

PURCHASER SIGNATURE PAGES TO NOTE PURCHASE AGREEMENT

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

Name of Purchaser: ____

Signature of Authorized Signatory of Purchaser: _________________________________

Name of Authorized Signatory: ____

Title of Authorized Signatory: ____

Email Address of Authorized Signatory: ____

Address for Notice to Purchaser:

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

Term Note Subscription Amount: $_________________

____

Convertible Note Subscription Amount: $_________________

EIN Number: ____________________

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (the "Agreement") is dated as of January 23, 2024, by and among SpringBig Holdings, Inc. (the "Company"), and each Person defined on the signature pages hereto (together with their respective successors and assigns, each a "Holder").

WHEREAS, the Company has agreed to provide certain registration rights to the Holders in order to induce each Holder to enter into that certain Note Purchase Agreement by and among the Company and each Holder dated as of January 23, 2024 (the "Purchase Agreement").

Now, therefore, in consideration of the mutual promises and the covenants as set forth herein, the parties hereto hereby agree as follows:

1. **Definitions**. Unless the context otherwise requires, capitalized words and terms used herein without definition and defined in the Purchase Agreement are used herein as defined therein. Notwithstanding the foregoing, as used herein the capitalized words and terms defined in this Section 1 shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms herein defined:

"Agreement" means this Registration Rights Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof.

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

"Common Stock" means the Company's authorized common stock, as constituted on the date of this Agreement, any stock into which such Common Stock may thereafter be changed and any stock of the Company of any other class, which is not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption, issued to the holders of shares of such Common Stock upon any re-classification thereof.

"Company" has the meaning assigned to it in the introductory paragraph of this Agreement.

"Company Securities" means any securities proposed to be sold by the Company for its own account in a registered public offering.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Forms" means Registration Statements under the Securities Act on Forms S-4 and S-8 or any successors.

"Holder" means each Person defined on the signature pages hereto, together with its successors and assigns; provided that any decision to be made under this Agreement by the Holders shall be made by the Lead Investor and Lightbank.

"Lightbank" means Lightbank II, L.P.

"Person" includes any natural person, corporation, trust, association, company, partnership, joint venture, limited liability company and other entity and any government, governmental agency, instrumentality or political subdivision.

"Proposed Registration" means any proposed Registration Statement to be filed pursuant to this Agreement.

"Purchase Agreement" has the meaning assigned to it in the Recitals of this Agreement.

The terms "register" "registered" and "registration" refer to a registration effected by preparing and filing a Registration Statement on other than any of the Excluded Forms in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such Registration Statement.

"Registration Statement" means any registration statement filed by the Company on behalf of any Holders.

"Registrable Securities" means (i) the Common Stock to be acquired by each Holder pursuant to the conversion of the Convertible Notes, and (ii) any securities of the Company issued with respect to such Common Stock by way of any stock dividend or stock split or in connection with any merger, combination, recapitalization, share exchange, consolidation, reorganization or other similar transaction. As to any particular Registrable Securities, such securities will cease to be Registrable Securities when they have been (a) sold or distributed pursuant to a public offering, (b) sold in compliance with Rule 144, (c) distributed to the direct or indirect partners or members of a Holder or (d) repurchased by the Company or a Subsidiary of the Company. Notwithstanding the foregoing, any Registrable Securities held by any Person that may be sold under Rule 144(b)(1)(i) without limitation under any of the other requirements of Rule 144 will be deemed not to be Registrable Securities.

"Representatives" means all shareholders, officers, directors, members, managers, partners, employees and agents.

"Rule 144" means Rule 144 under the Securities Act (or any successor provision), as the same will be amended from time to time, or any successor rule then in force.

"SEC" means the Securities and Exchange Commission or any other governmental body at the time administering the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended.

"Selling Expenses" means all selling commissions, underwriting discounts, other fees paid by a Holder to a broker-dealer, finder's fees and stock transfer taxes applicable to the Registrable Securities contained in a Registration Statement for the benefit of each Holder.

2. **Required Registration**. Within 30 days after the Closing, the Company shall file with the SEC a Registration Statement on Form S-1 or S-3, or any successor form covering the sale of all of the Registrable Securities.

3. **Obligations of the Company**. If and whenever the Company is required by the provisions hereof to effect or cause the registration of any Registrable Securities under the Securities Act as provided herein, the Company shall:

(a) prepare and file with the SEC within 30 days after the Closing a Registration Statement with respect to such Registrable Securities and cause any such Registration Statement to become effective within 75 days after such filing;

(b) subject to complying with Section 3(a), prepare and file with the SEC such amendments to any such Registration Statement (including post-effective amendments) and supplements to the prospectus included therein as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the Holders set forth in such Registration Statement;

(c) furnish to each Holder such number of copies of such Registration Statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such Registration Statement (including each preliminary prospectus), in conformity with the requirements of the Securities Act, and such other documents, as each Holder may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Securities owned by the Holders;

(d) use all commercially reasonable efforts to make such filings under the securities or blue sky laws of such states or commonwealths as any Holder may reasonably request to enable each Holder to consummate the sale;

(e) promptly notify the Holders at any time when a prospectus relating to their Registrable Securities is required to be delivered under the Securities Act, of the Company's becoming aware that the prospectus included in the related Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare and furnish to the Holders a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(f) otherwise comply with all applicable rules and regulations of the SEC and to perform its obligations hereunder;

(g) use commercially reasonable efforts to cause the Registrable Securities to be quoted on the Principal Market;

(h) provide a transfer agent for all Registrable Securities and promptly pay all fees and costs of the transfer agent;

(i) provide a CUSIP number for all Registrable Securities, in each case not later than the effective date of the applicable Registration Statement; and

(j) notify the Holders of any stop order threatened or issued by the SEC and take all actions reasonably necessary to prevent the entry of such stop order or to remove it if entered.

4. **Other Procedures**.

(a) Subject to the remaining provisions of this Section 4 and the Company's general obligations under Section 3, the Company shall be required to maintain the effectiveness of a Registration Statement until the earlier of (i) the sale of all Registrable Securities and (ii) the first date on which there are no more Registrable Securities.

(b) In consideration of the Company's obligations under this Agreement, the Holders agree that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e) herein, each Holder shall forthwith discontinue its sale of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Holder's receipt of the copies of the supplemented or amended prospectus contemplated by said Section 3(e).

(c) The Company's obligation to file any Registration Statement or amendment including a post-effective amendment, shall be subject to each Holder, as applicable, furnishing to the Company in writing such information and documents regarding such Holder and the distribution of such Holder's Registrable Securities as may reasonably be required to be disclosed in the Registration Statement in question by the rules and regulations under the Securities Act or under any other applicable securities or blue sky laws of the jurisdiction referred to in Section 3(d) herein. The Company's obligations are also subject to each Holder promptly executing any representation letter concerning compliance with Regulation M under the Exchange Act (or any successor rule or regulation). If any Holder fails to provide all of the information required by this Section 4(c), the Company shall have no obligation to include its Registrable Securities in a Registration Statement or it may withdraw such Holder's Registrable Securities from the Registration Statement without incurring any penalty or otherwise incurring liability to such Holder.

5. **Registration Expenses**. In connection with any registration of Registrable Securities pursuant to Section 2, the Company shall, whether or not any such registration shall become effective, from time to time, pay all expenses (other than Selling Expenses) incident to its performance of or compliance, including, without limitation, all registration, and filing fees, fees and expenses of compliance with securities or blue sky laws, word processing, printing and copying expenses, messenger and delivery expenses, fees and disbursements of counsel for the Company and all independent public accountants and other Persons retained by the Company.

6. **Indemnification.**

(a) In the event of any registration of any shares of Common Stock under the Securities Act pursuant to this Agreement, the Company shall indemnify, defend and hold harmless each Holder, its Affiliates, and their respective Representatives, successors and assigns, from and against any losses, claims, damages or liabilities, joint or several, to which each

Holder, its Affiliates, and its respective Representatives, successors and assigns may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Securities were registered under the Securities Act, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, or any document incident to registration or qualification of any Registrable Securities pursuant to Section 3(d) herein, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or, with respect to any prospectus, necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or any violation by the Company of the Securities Act, the Exchange Act, or state securities or blue sky laws or relating to action or inaction required of the Company in connection with such registration or qualification under the Securities Act or such state securities or blue sky laws. If the Company fails to defend the Holder, its Affiliates, and its respective Representatives, successors and assigns, as applicable, as required by Section 6(c) herein, it shall reimburse (after receipt of appropriate documentation) each Holder, its Affiliates, and its respective Representatives, successors and assigns for any legal or any other reasonable and documented out-of-pocket expenses incurred by any of them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company shall not be liable to a Holder, its Affiliates, or its respective Representatives, successors or assigns in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in said Registration Statement, said preliminary prospectus, said prospectus, or said amendment or supplement or any document incident to registration or qualification of any Registrable Securities pursuant to Section 3(d) hereof in reliance upon and in conformity with written information furnished to the Company by such Holder, its Affiliates, or its respective Representatives, successors or assigns specifically for use in the preparation thereof.

(b) In the event of any registration of any Registrable Securities under the Securities Act pursuant to this Agreement, each Holder shall, severally and not jointly, indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 6(a)) the Company, each director of the Company, each officer of the Company who signs such Registration Statement, the Company's attorneys and auditors and any Person who controls the Company within the meaning of the Securities Act, from and against any loss, claim, damage or liability that arises out of or is based upon any untrue statement or omission from such Registration Statement, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereto, if and to the extent that such untrue statement or omission was made in reliance upon and in conformity with written information furnished to the Company by such Holder specifically for use in the preparation of such Registration Statement, preliminary prospectus, final prospectus or amendment or supplement.

(c) Promptly after receipt by an indemnified party of notice of the commencement of any action involving a claim referred to in Section 6(a) or (b), such indemnified party shall, if a claim in respect thereof is made against an indemnifying party, give written notice to such indemnifying party of the commencement of such action. The indemnifying party shall be relieved of its obligations under this Section 6(c) if and to the extent that the indemnified party

delays in giving notice and the indemnifying party is damaged or prejudiced by the delay. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so as to assume the defense thereof, the indemnifying party shall be responsible for any legal or other expenses subsequently incurred by the indemnifying party in connection with the defense thereof, provided, however, that, if counsel for an indemnified party shall have reasonably concluded that there is an actual or potential conflict of interest between the indemnified party and the indemnifying party, the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party, and such indemnifying party shall reimburse such indemnified party for the reasonable and documented fees and expenses of counsel (including local counsel, if applicable) retained by the indemnified party which are reasonably related to the matters covered by the indemnity agreement provided in this Section 6; provided, further, that in no event shall any indemnification by a Holder under this Section 6 exceed the net proceeds from the sale of Registrable Securities received by such Holder. No indemnified party shall make any settlement of any claims indemnified against hereunder without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. In the event that any indemnifying party enters into any settlement without the written consent of the indemnified party, the indemnifying party shall not consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff of a release of such indemnified party from all liability in respect to such claim or litigation.

(d) In order to provide for just and equitable contribution to joint liability under the Securities Act in any case in which (i) any indemnified party makes a claim for indemnification pursuant to this Section 6, but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 6 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required in circumstances for which indemnification is provided under this Section 6; then, in each such case, the Company and each such Holder shall contribute to the aggregate losses, claims, damages or liabilities to which they may be subject as is appropriate to reflect the relative fault of the Company and such Holder in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, it being understood that the parties acknowledge that the overriding equitable consideration to be given effect in connection with this provision is the ability of one party or the other to correct the statement or omission (or avoid the conduct or take an act) which resulted in such losses, claims, damages or liabilities, and that it would not be just and equitable if contribution pursuant hereto were to be determined by pro-rata allocation or by any other method of allocation which does not take into consideration the foregoing equitable considerations. Notwithstanding the foregoing, (i) no such Holder shall be required to contribute any amount in excess of the net proceeds to it of all Registrable Securities sold by it pursuant to such Registration Statement, and (ii) no Person who is guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act shall be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

7. **Rule 144**. The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the reasonable request of the Holders, make publicly available such necessary information for so long as necessary to permit sales pursuant to Rule 144), and it will take such further action as the Holders may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144.

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

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

10. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Holders. Each Holder may assign any or all of its rights under this Agreement to any Person to whom such Holder assigns or transfers any Convertible Notes, provided that such transferee agrees in writing to be bound, with respect to the transferred Convertible Notes, by the provisions of the Transaction Documents that apply to such Holder. This Agreement shall not confer any rights or benefits on any persons that are not parties hereto, other than as expressly set forth in this Agreement, including this Section 10.

11. **Notices and Addresses**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 11 prior to 5:00 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 11 on a day that is not a Trading Day or later than 5:00 p.m. (New York City time) on any date and earlier than 11:59 p.m. (New York City time) on such date, (c) the Trading Day following the date of delivery to a carrier , if sent by U.S. nationally recognized overnight courier service next

Trading Day delivery, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for notice shall be as set forth in the Purchase Agreement.

12. **Entire Agreement; Oral Evidence**. This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement of the change, waiver discharge or termination is sought.

13. **Additional Documents**. The parties hereto shall execute such additional instruments as may be reasonably required by their counsel in order to carry out the purpose and intent of this Agreement and to fulfill the obligations of the parties hereunder.

14. **Governing Law; Exclusive Jurisdiction; Attorneys' Fees**. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in New York, New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of this Agreement, then, in addition to the obligations of the Company elsewhere in this Agreement, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

16. **Section or Paragraph Headings**. Section headings herein have been inserted for reference only and shall not be deemed to limit or otherwise affect, in any matter, or be deemed to interpret in whole or in part any of the terms or provisions of this Agreement.

[*Signature Page Follows.*]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed personally or by a duly authorized representative thereof as of the day and year first above written.

Company:
SpringBig Holdings, Inc.
By:/s/ Paul Sykes
Name:Paul Sykes
Title: Chief Financial Officer

Holder:

By:________________________________
Name:
Title:

springbig announces issuance of $6.4 million of Convertible Notes due 2026 and $1.6 million Term Loan due 2026 and repurchase of existing Convertible Notes

Boca Raton, Fla. – January 24, 2024 -- SpringBig Holdings, Inc. ("springbig," "we," "our" or the "Company") (OTCQX: SBIG), a leading provider of vertical SaaS-based marketing solutions, consumer mobile app experiences, and omnichannel loyalty programs, today announced that it has secured $8.0 million of debt financing with a syndicate of lenders consisting of $6.4 million 8% Secured Convertible Note (the "Convertible Note") due 2026 and $1.6 million 12% Secured Term Loan (the "Term Loan") due 2026. Proceeds from the Convertible Note and Term Loan will be used to repurchase entirely the outstanding existing Senior Secured Convertible Note due 2025 (the "Existing Note") for a discounted amount of approximately $2.9 million and for general corporate purposes. The net proceeds after repurchasing the Existing Note and transaction costs is estimated to be $4.6 million.

"Springbig now has a much stronger and cleaner balance sheet with the capital that will enable the Company to continue to expand and deliver shareholder value," said Paul Sykes, CFO. "During 2023 we have significantly improved our financial profile, significantly reducing SG&A while being able to maintain revenue growth in a challenging climate and concluded the year achieving our stated objective of positive Adjusted EBITDA* in December. We have re-sized our expense base and anticipate 2024 operating expenses will be approximately 25% lower than in 2023, and that we expect to generate Adjusted EBITDA* margins of 12%-15% in 2024."

Jeffrey Harris, CEO and Chairman of springbig, said, "The Company is in an excellent position. We have a sound strategy and I remain confident that we are making the right investments to both add value to our clients while at the same time capturing the long-term opportunity in front of us. Springbig has a rich menu of innovative solutions to enable our clients to retain and grow their customer bases and we are particularly encouraged by our recent launches of '*subscriptions by springbig*', offering our clients robust capabilities to launch and power their own subscription-based VIP loyalty programs and '*gift cards by springbig*', offering a secure, user-friendly, and efficient payment solution. With the closing of the Convertible Note and Term Loan financing we now have a stronger balance sheet and the capital to support our future growth. Springbig is fresh off a positive Adjusted EBITDA* month in December, and I am proud to be heading into 2024 which we believe will be a year of meaningful market success."

The Convertible Note will mature two years after the date of issuance and is convertible into common stock at the option of the holders at any time prior to the last business day immediately preceding the maturity date at a conversion price of $0.15. Interest at 8% per annum is payable by adding such interest to the outstanding amount owing under the Convertible Note until the earlier of the date of maturity or conversion.

The Term Loan will rank pari passu with the Convertible Note and will also mature in January 2026. Interest at 12% per annum is payable in cash each six months in arrears.

The Convertible Note and Term Loan and related guarantees were offered only to accredited investors in reliance on Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act") and/or Rule 506(b) of Regulation D promulgated thereunder. This press release does not constitute an offer to sell or the solicitation of an offer to buy the Convertible Note and Term Loan and related guarantees or the

common stock into which the Convertible Note is convertible. These securities have not been registered under the Securities Act, or the securities laws of any other jurisdiction, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Financial Outlook

For the year ended December 31, 2023, springbig currently expects revenue and Adjusted EBITDA* to be in line with guidance previously provided at the announcement of our third-quarter earnings, namely revenue in the range $28.0 - $28.5 million and Adjusted EBITDA* loss of approximately $(3.4) million, compared with an Adjusted EBITDA* loss in the prior year of $(12.6) million.

For the year ending December 31, 2024, the Company expects revenue to be in the range $29.5 - $32.5 million, representing approximately 10% at the midpoint, and Adjusted EBITDA* profit in the range $3.5 - $5.0 million.

* Adjusted EBITDA is a non-GAAP financial measure provided in this "Financial Outlook" section on a forward-looking basis. We calculate Adjusted EBITDA as net income before interest, taxes, depreciation and amortization, and further adjustments to exclude unusual and/or infrequent costs. The Company does not provide a reconciliation of such forward-looking measure to the most directly comparable financial measure calculated and presented in accordance with GAAP because to do so would be potentially misleading and not practical given the difficulty of projecting event-driven transactional and other non-core operating items in any future period. The magnitude of these items, however, may be significant.

We present Adjusted EBITDA because this metric is a key measure used by our management to evaluate our operating performance, generate future operating plans and make strategic decisions regarding the allocation of investment capacity. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management. Management also believes that these measures provide improved comparability between fiscal periods.

Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are as follows:

- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs; and
- Adjusted EBITDA does not reflect tax payments that may represent a reduction in cash available to us.

Because of these limitations, you should consider Adjusted EBITDA alongside other financial performance measures, including net income and our other GAAP results. Also, these non-GAAP financial measures, as determined and presented by the Company, may not be comparable to related or similarly titled measures reported by other companies.

About springbig

springbig is a market-leading vertical software platform providing customer loyalty and marketing automation solutions to retailers and brands in the U.S. and Canada. springbig's platform connects consumers with retailers and brands, primarily through SMS marketing, as well as emails, customer feedback systems, and loyalty programs, to support retailers' and brands' customer engagement and retention. springbig offers marketing automation solutions that provide for consistency of customer communication, thereby driving customer retention and retail foot traffic. Additionally, springbig's reporting and analytics offerings deliver valuable insights that clients utilize to better understand their customer bases, purchasing habits and trends. For more information, visit https://springbig.com/.

Forward Looking Statements

Certain statements contained in this press release constitute "forward-looking statements" within the meaning of the "safe harbor" provisions of the United States Private Securities Litigation Reform Act of 1995. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intends," "outlook," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "would," and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements are predictions, projections and other statements about future events and financial results that are based on current expectations and assumptions and, as a result, are subject to risks and uncertainties. In particular, these include but are not limited to statements relating to the Company's expected financial performance for the year ended December 31, 2023, and business strategy, future offerings and programs and expected financial performance for the year ending December 31, 2024. Many factors could cause actual future events and financial results to differ materially from the forward-looking statements in this press release, including but not limited to the fact that we have a relatively short operating history in a rapidly evolving industry, which makes it difficult to evaluate our future prospects and may increase the risk that we will not be successful; that if we do not successfully develop and deploy new software, platform features or services to address the needs of our clients, if we fail to retain our existing clients or acquire new clients, and/or if we fail to expand effectively into new markets, our revenue may decrease and our business may be harmed; and the other risks and uncertainties described under "Risk Factors" in the Company's Quarterly Reports on Form 10-Q for the quarters ended September 30, 2023 and June 30, 2023 filed with the Securities and Exchange Commission (the "SEC") on November 13, 2023 and August 10, 2023 respectively, the Company's Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 28, 2023 and in the other documents we file from time to time with the SEC. These forward-looking statements involve a number of risks and uncertainties (some of which are beyond the control of springbig), and other assumptions, which may cause the actual results or performance to be materially different from those expressed or implied by these forward-looking statements. Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and the Company assumes no obligation and does not intend to update or revise these forward-looking statements other than as required by applicable law. The Company does not give any assurance that it will achieve its expectations.

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