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): June 30, 2020

Superconductor Technologies Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware	**0-21074**	**77-0158076**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(I.R.S. Employer Identification Number)**

15511 W. State Hwy 71, Suite 110-105, Austin, TX 78738
(Address of Principal Executive Offices) (Zip Code)

(512) 650-7775
(Registrant's telephone number, including area code)

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

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

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

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.001	**SCON**	**The NASDAQ Stock Market LLC**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). 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.

Securities Purchase Agreement

As previously disclosed, on February 26, 2020, Superconductor Technologies Inc. ("**STI**"), AIU Special Merger Company, Inc., a Delaware corporation and wholly-owned subsidiary of STI ("**Merger Sub**"), and Allied Integral United, Inc., a Delaware corporation ("**AIU**" or "**Clearday**"), entered into an Agreement and Plan of Merger (as amended on May 12, 2020, the "**Merger Agreement**"), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into AIU, with AIU continuing as a wholly-owned subsidiary of STI (the "**Merger**"), and STI would amend its certificate of incorporation to effect a reverse stock split of its shares of common stock, par value $0.001 per share ("**STI Common Stock**") and change its name to Clearday, Inc.

On June 30, 2020, STI and a wholly-owned subsidiary of Clearday ("**Clearday Sub**") entered into a Securities Purchase Agreement (the "Purchase Agreement"), which was consummated on July 6, 2020, pursuant to which STI issued four million (4,000,000) shares of STI Common Stock (without any warrants) in exchange for a preferred equity interest in real estate (described below) that STI values at $1.6 million, implying a purchase price of $0.40 per share. STI determined the valuation of the real estate based on the fact it was acquired by Clearday in an arm's-length all-cash purchase in November 2019 and a recent broker's price report.

STI received a 50% preferred equity interest in Naples JV, LLC ("**Holdings**"), the single-asset holding company that owns 100% of the equity interests of the single-asset limited liability company ("**Property LLC**") which, in turn, solely owns an un-encumbered fee simple interest in a three-story commercial office building in San Antonio, Texas, that serves as the corporate headquarters of Clearday (the "**Building**") and also has other medical office tenants. In addition, the Building, which is located in an opportunity zone, is expected to be the location for one of Clearday's adult daycare centers and a site to use and/or test a product to improve air quality utilizing STI's existing Cryogenic Cooler as an enabling technology for one of Clearday's service offerings in the home healthcare market.

Clearday Sub owns the other 50% of Holdings in the form of common equity. STI has a $1.6 million preference over the Clearday Sub common equity in connection with any liquidity event involving Holdings, Property LLC or the Building (such as a sale or refinancing of the Building), and each of Clearday Sub and STI have a 50% interest in any ordinary course distributions from Holdings. STI's preferred interest is redeemed upon payment to STI of its full liquidation preference in cash.

STI's interest in Holdings is governed by a limited liability company agreement (the "**LLC Agreement**"). Holdings is managed by a Board of Managers, consisting of only two managers, one appointed by STI and the other appointed by Clearday Sub. The LLC Agreement also provides various covenants against encumbering the Building, Holdings or the Property LLC, subject to limited exceptions, however Clearday Sub runs day to day operations of Holdings and is permitted to allow Clearday to use the property rent-free for its business. STI's interest is principally in the Building itself, rather than the rental stream that might be generated from leases to third parties, although until STI's liquidation preference is paid in full in cash, STI will be entitled to its 50% share of any distributions out of Holdings.

STI agreed to register the four million shares of STI Common Stock issued to Clearday Sub pursuant to a registration rights agreement (the "**Registration Agreement**"). Clearday Sub may not transfer the shares of STI Common Stock it received pursuant to the Purchase Agreement unless the Merger Agreement were to be terminated in accordance with its terms, after which event STI would be obligated to file a registration statement within 40 days and have it declared effective within 75 days (or 100 days after a full SEC review) or pay liquidated damages at the rate of 1% of $1.6 million per month until the default is remedied.

Immediately prior to the closing of the foregoing transactions, Clearday Sub assigned its rights under the Purchase Agreement and Registration Agreement to AIU, and STI consented to such assignment.

The STI Common stock sold to Clearday Sub is restricted, as the offering was made pursuant to the exemption from registration afforded by Section 4(a)(2) under the Securities Act of 1933, as amended, based on, among other things, the lack of any general solicitation, the nature and sophistication of the purchaser, that there is only one purchaser, the information available about STI and the representations made by the purchaser.

STI issued a press release regarding the private placement on July 6, 2020, the text of which is set forth in Exhibit 99.1 hereto.

The foregoing descriptions of the Purchase Agreement, the LLC Agreement and the Registration Agreement above, are subject to, and qualified in their entirety by, the text of such agreements filed as Exhibit 10.1, 10.2 and 10.3 hereto, which are incorporated in this Item 1.01 by reference in their entirety.

Item 3.02 Unregistered Sales of Equity Securities.

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

Item 8.01 Other Events.

As previously disclosed, STI was notified by the staff of The Nasdaq Stock Market that it did not satisfy the minimum $2.5 million stockholders' equity requirement (the "**Equity Rule**") for continued listing on The Nasdaq Capital Market or the minimum bid-price rule (the "**Price Rule**"). STI thereafter presented its plan to regain compliance with the Equity Rule and the Price Rule to the Nasdaq Hearings Panel, which granted the Company an extension, through July 6, 2020, to evidence full compliance with the Equity Rule and (due to a grace period provided related to the COVID-19 pandemic), through September 21, 2020 to evidence full compliance with the Price Rule.

STI still intends to complete its Merger with Clearday, however it has not yet filed a registration statement with the Securities and Exchange Commission for the Merger due to delays in Clearday's initial audit to be a public company.

As noted in Item 1.01 of this Current Report on Form 8-K, STI completed a private placement of common stock in exchange for a preferred equity real estate interest that it values at $1.6 million. As a result of that private placement, STI believes it satisfies the Equity Rule for continued listing on The Nasdaq Capital Market as of the date of this filing. STI intends to also satisfy the Price Rule by the extended compliance date by taking appropriate action, including through completion of the merger with Clearday and/or completion of a reverse stock split.

The Nasdaq Hearing Panel's confirmation, in its discretion, is required in order for STI to be deemed to be in compliance with the Equity Rule. STI has notified the Nasdaq Hearing Panel and awaits its decision.

Forward-Looking Statements

This communication contains forward-looking statements (including within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended) concerning STI, AIU, the proposed Merger, and other matters. These statements may discuss the valuation of the Building, goals, intentions and expectations as to future plans, trends, events, results of operations or financial condition, or otherwise, based on current beliefs of the management of STI, as well as assumptions made by, and information currently available to, management. Forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as "may," "will," "should," "would," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," and other similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties and are not guarantees of future performance. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation: the risk that the Building, which was not valued by a formal appraisal process, is worth less than the value STI attributes to it or that it declines in value in the future; the risk that STI's preferred interest in the Building is illiquid; the risk that the Nasdaq Hearing Panel does not agree that STI has regained compliance with the Equity Rule, which could result in immediate delisting; the risk that even if STI has regained compliance with the Equity Rule, it fails to regain compliance with the Price Rule by September 21, 2020, would could result in immediate delisting; the risk that the delay in consummating the Merger will create increased expense to STI; the risk that the conditions to the closing of the proposed Merger are not satisfied, including the failure to obtain stockholder approval for the proposed Merger in a timely manner or at all; uncertainties as to the timing of the consummation of the proposed

Merger and the ability of each of STI and AIU to consummate the Merger; risks related to STI's ability to correctly estimate and manage its operating expenses and its expenses associated with the proposed Merger pending closing; risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed Merger; risks associated with the possible failure to realize certain anticipated benefits of the proposed Merger, including with respect to future financial and operating results; the ability of STI or AIU to protect their respective intellectual property rights; competitive responses to the Merger and changes in expected or existing competition; unexpected costs, charges or expenses resulting from the proposed Merger; potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed Merger; regulatory requirements or developments; changes in capital resource requirements; and legislative, regulatory, political and economic developments. The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in STI's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the SEC. STI can give no assurance that the conditions to the Merger will be satisfied. Except as required by applicable law, STI undertakes no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

Important Additional Information Will be Filed with the SEC

In connection with the proposed Merger, STI intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a proxy statement/prospectus/information statement. **INVESTORS AND STOCKHOLDERS OF STI ARE URGED TO READ THESE MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT STI, THE MERGER AND RELATED MATTERS**. Investors and stockholders will be able to obtain free copies of the proxy statement, prospectus and other documents filed by STI with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. In addition, investors and stockholders will be able to obtain free copies of the proxy statement, prospectus and other documents filed by STI with the SEC by contacting STI by mail at Superconductor Technologies Inc., 15511 W. State Hwy 71, Suite 110-105Austin, TX 78738, (512) 650-7775, Attention: Corporate Secretary. Investors and stockholders are urged to read the proxy statement, prospectus and the other relevant materials when they become available before making any voting or investment decision with respect to the Merger.

No Offer or Solicitation

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Participants in the Solicitation

STI and its directors and executive officers and AIU and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of STI in connection with the Merger. Information regarding the special interests of these directors and executive officers in the Merger will be included in the proxy statement/prospectus/information statement referred to above. Additional information about STI's directors and executive officers is included in STI's definitive proxy statement filed with the SEC on April 26, 2019. These documents are available free of charge at the SEC website (www.sec.gov) and from the Corporate Secretary of STI at the address above.

Item 9.01. Financial Statements and Exhibits.

Exhibit No.	Description
10.1	Securities Purchase Agreement between Superconductor Technologies Inc. and Clearday Naples LLC, dated June 30, 2020
10.2	Amended and Restated Limited Liability Company Agreement of Naples JV, LLC, between Superconductor Technologies Inc. and Clearday Naples LLC, dated July 6, 2020
10.3	Registration Rights Agreement between Superconductor Technologies Inc. and Allied Integral United, Inc. Clearday Naples LLC, dated July 6, 2020
99.1	Press Release issued by Superconductor Technologies Inc. on July 6, 2020

SIGNATURE

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

Superconductor Technologies Inc.

Date: July 6, 2020

By: /s/ Jeffrey A. Quiram
Jeffrey A. Quiram
Chief Executive Officer

Exhibit 10.1

SECURITIES PURCHASE AGREEMENT

Superconductor Technologies Inc., a Delaware corporation (the "Company")

and

Clearday Naples LLC, a Delaware limited liability company (the "Purchaser")

June 30, 2020

SECURITIES PURCHASE AGREEMENT

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SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of June 30, 2020 between Superconductor Technologies Inc., a Delaware corporation (the "Company"), and Clearday Naples LLC, a Delaware limited liability company (the "Purchaser").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to an exemption from the registration requirements of Section 5 of the Securities Act contained in Section 4(a)(2) thereof, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

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

ARTICLE 1
DEFINITIONS

1.1. Definitions.

In addition to the 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(i).

"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.

"AIU" means Allied Integral United, Inc., a Delaware corporation.

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

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

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

"Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers' obligations to pay the Subscription Amount and (ii) the Company's obligations to deliver the Shares, in each case, have been satisfied or waived, but in no event later than the third (3rd) Trading Day following the date hereof.

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

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

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

"Company Counsel" means Proskauer Rose LLP, with offices located at 2029 Century Park East, Los Angeles, California 90067.

"Delist Event" means any failure of the Company to remain listed on the Nasdaq Stock Market or any of its tiers, including any adverse developments (such as loss of liquidity or trading volume) that may result therefrom, or any adverse developments in the Company's hearing before a Nasdaq Hearing Panel.

"Disclosure Schedules" means the Disclosure Schedules of the Company or the Purchaser (as the context requires) delivered concurrently herewith, if any.

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

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

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction; provided, that the restrictions and encumbrances of the LLC Agreement and the Permitted Encumbrances shall not be included as a Lien.

"LLC Agreement" means the Limited Liability Company Agreement of Naples JV, LLC, dated on or about the date hereof, by and between the Company and Clearday Naples LLC, in substantially the form attached as Exhibit A hereto, as the same may be amended from time to time in accordance with the terms thereof.

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

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

"Merger Agreement" means that certain Agreement and Plan of Merger by and among the Company, an affiliate of the Company and AIU dated February 26, 2020, as amended by Amendment No 1 thereto, and as may be further amended.

"Naples LLC" means Naples JV LLC, a Delaware limited liability company that, as of the Closing Date, shall own all of the equity interets of Property LLC.

"Permitted Encumbrances" means the Liens set forth as exceptions to title in the title insurance policy that was delivered t the Company.

"Per Share Purchase Price" equals Forty Cents ($.40), 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.

"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.

"Preferred LLC Interest" shall have the meaning ascribed thereto in the LLC Agreement.

"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 to the Company's or the Purchaser's (as applicable) knowledge threatened.

"Property" means the commercial real estate land, building and appurtences located at 8800 Village Drive, San Antonio, Texas.

"Property LLC" means AIU 8800 Village Drive LLC, a Delaware limited liability company.

"Purchaser Subsidiary" means any corporation, limited liability company, partnership, association or business entity of which (x) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by the Purchaser, or (y) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership, membership or other similar ownership interest thereof, or the voting power thereof, is at the time owned or controlled, directly or indirectly, by the Purchaser. Except as otherwise expressly provided herein, Purchaser Subsidiary means, both as of the date hereof and as of the Closing, Naples LLC and Property LLC and any other entity that comes within the definition of Purchaser Subisdiiary.

"Registration Rights Agreement" means the Registration Rights Agreement, dated on or about the date hereof, among the Company and the Purchaser, in substantially the form of Exhibit B attached hereto.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

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

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

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

"Shares" means the shares of Common Stock issued or issuable to the Purchaser pursuant to this Agreement.

"Subsidiary" means any significant subsidiary of the Company as defined under Regulation S-X of the Securities Act and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof but before the Closing Date.

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

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Registration Rights Agreement, the LLC Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means Computershare, the current transfer agent of the Company, with a mailing address of 250 Royall St., Canton, MA 02021 and a facsimile number of (781) 298-2866, and any successor transfer agent of the Company.

ARTICLE 2
PURCHASE AND SALE

2.1. Closing.

On the Closing Date, upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and the Purchaser agrees to purchase an aggregate of $1,600,000 (the "Subscription Amount") of Shares as calculated pursuant to Section 2.2(a). The Purchaser's Subscription Amount shall not be paid in cash; rather, the Subscription Amount shall be deemed paid in full upon delivery of the Purchaser's counterpart signature to the LLC Agreement and the transfer and assignment of the Preferred LLC Interests to the Company free and clear of all Liens. The Company shall deliver to the Purchaser its Shares as determined pursuant to Section 2.2(a), and the Company and the Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of Company Counsel or such other location as the parties shall mutually agree. Unless otherwise agreed, settlement of the Shares shall occur via any customary method selected by the Company and reasonably acceptable to the Purchaser, including DWAC (as defined below), book entry or physical delivery.

2.2. Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to the Purchaser the following:

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

(ii) the LLC Agreement duly executed by the Company; and

(iii) a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver on an expedited basis via The Depository Trust Company Deposit or Withdrawal at Custodian system ("DWAC") (or via other method permitted by Section 2.1) Shares equal to the Subscription Amount divided by the Per Share Purchase Price, registered in the name of such Purchaser;

(b) On or prior to the Closing Date, the Purchaser shall deliver or cause to be delivered to the Company the following:

(i) the Registration Rights Agreement duly executed by the Purchaser;

(ii) evidence reasonably acceptable to the Company demonstrating that Naples LLC owns the Property LLC free and clear of all Liens and

(iii) the LLC Agreement duly executed by the Purchaser and Naples LLC and evidence of the issuance of the Preferred LLC Interest to the Company.

2.3. 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 (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Purchaser contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

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

(iii) the Company is reasonably satisfied with the accounting and financial supplemental due diligence information to be provided by the Purchaser regarding the Purchaser and the Purchaser Subsidiaries, and with the accounting for the transactions contemplated hereby as a net increase to the Company's stockholder's equity in the amount at least equal to the Subscription Amount and shall not have reasonably determined that the Nasdaq or its Hearing Panel disapproves of, or deems inadequate, the transactions contemplated hereby; and

(iv) the delivery by the Purchaser of the items set forth in Section 2.2(b) of this Agreement.

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

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

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

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement.

2.4. Merger Agreement.

The parties agree, and shall cause their Affiliates to agree, that this Agreement be and hereby is approved and consented to for all purposes under the Merger Agreement.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties of the Company.

Except as set forth in the Disclosure Schedules and/or the SEC Reports, which Disclosure Schedules shall be deemed a part hereof and which Disclosure Schedules and SEC Reports shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules or as reasonably evident from the SEC Reports, the Company hereby makes the following representations and warranties to the Purchaser:

(a) Subsidiaries. All of the material direct and indirect Subsidiaries of the Company are disclosed 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. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite corporate power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would 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 (whether or not "significant"), 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), but excluding a Delist Event, a "Material Adverse Effect"; and such term shall also apply to the Purchaser and the Purchaser Subsidiaries, mutatis mutandis, where the context so requires) and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with 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, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company 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.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Shares and the consummation by it 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 or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as would not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) application(s) to each applicable Trading Market for the listing of the Shares for trading thereon in the time and manner required thereby, (ii) the filing of Form D with the Commission and any Current Report on Form 8-K that may be required and (iii) such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Shares. The Shares are duly authorized and, when issued and paid for in accordance with this Agreement by the transfer and assignment of the interests in Naples LLC and the execution and delivery by Naples LLC and the Purchaser of the Naples LLC Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company.

(g) Capitalization. The capitalization of the Company is as set forth in the SEC Reports, subject to the issuance of additional shares that are not required to be reported on a Form 8-K by the Company. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act or such number of shares that are not required to be reported on a Form 8-K by the Company. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Shares, and except for the Merger Agreement, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Shares will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any 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 are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance in all material respects 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 granted by the Company. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Shares. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, 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) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. 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. The Company has never been an issuer subject to Rule 144(i) under the Securities Act. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with 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 fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action" and such term shall also apply to the Purchaser and the Purchaser Subsidiaries, mutatis mutandis, where the context so requires) which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Shares or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor, to the Company's knowledge, any director or officer thereof, is or has been within the past three (3) years the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(j) Private Placement. Assuming the accuracy of the 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 Shares by the Company to the Purchaser as contemplated hereby.

3.2. Representations and Warranties of the Purchaser.

The Purchaser hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date and except that a Lien as referred to in this Section shall not include the obligations of Purchaser under this Agreement or the LLC Agreement):

(a) Subsidiaries. All of the direct and indirect Purchaser Subsidiaries, as of the Closing Date, are set forth on Schedule 3.2(a). The Purchaser or its Affiliates has the full power and authority, without the requiring the consent of any other Person or governmental entity to transfer all of its right, title and interest in and to the Property LLC to Naples LLC free and clear of all Liens. As of the Closing Date, the sole equity owner of the Property LLC is Naples LLC. The Purchaser owns, directly or indirectly, all of the capital stock or other equity interests of each Purchaser Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock (or other equity interests) of the Purchaser Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. The Purchaser and each of the Purchaser 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 corporate power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Purchaser nor any Purchaser Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Purchaser and the Purchaser 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, would not have or reasonably be expected to result in a Material Adverse Effect and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Purchaser has the requisite limited liability company power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Purchaser and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Purchaser and no further action is required by the Purchaser or any other Person in connection herewith or therewith. 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 Purchaser and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Purchaser enforceable against the Purchaser 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.

(d) No Conflicts. The execution, delivery and performance by the Purchaser of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Shares and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Purchaser's or any Purchaser Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Purchaser or any Purchaser Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Purchaser or Purchaser Subsidiary debt or otherwise) or other understanding to which the Purchaser or any Purchaser Subsidiary is a party or by which any property or asset of the Purchaser or any Purchaser 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 Purchaser or a Purchaser Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Purchaser or a Purchaser Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as would not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Purchaser is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Purchaser of the Transaction Documents.

(f) Capitalization.

(i) The capitalization of Naples LLC is as set forth on Schedule 3.2(f). 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. There are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any stock, partnership interest, joint venture interest, or other equity ownership interest in the Purchaser or any Purchaser Subsidiary, or contracts, commitments, understandings or arrangements by which the Purchaser or any Purchaser Subsidiary is or may become bound to issue additional shares of stock, partnership interest, joint venture interest, or other equity ownership interest, in each case, other than as set forth in the LLC Agreement. The transactions contemplated by the Transaction Documents will not obligate the Purchaser or any Purchaser Subsidiary to issue shares of any stock, partnership interest, joint venture

interest, or other equity ownership interest to any Person (other than the Company) other than as contemplated by this Agreement and the LLC Agreement. There are no outstanding securities or instruments of the Purchaser or any Purchaser Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Purchaser or any Purchaser Subsidiary is or may become bound to redeem a security of the Purchaser or such Purchaser Subsidiary. Neither Naples LLC nor the Property LLC has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding equity securities of the Naples LLC are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance in all material respects with all federal and state securities laws, and none of such equity interests was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities granted by the Purchaser.

(ii) The sole member of Property LLC is Naples LLC.

(g) Financial Statements; No Liabilities; Related Party Debt.

(i) The balance sheet of Property LLC provided to the Company as of December 31, 2019 (i) was prepared from, and is consistent with, the books and records of Property LLC and (ii) has been prepared on an accrual basis in accordance with GAAP consistently applied throughout the periods covered thereby and (iii) presents fairly the financial condition and member's equity of Property LLC, except as provided in such balance sheet and subject to normal, recurring year-end adjustments (none of which would be material, individually or in the aggregate) and the absence of notes. Property LLC is a sole purpose entity and has not conducted any material business activity other than the purchase of the Property and the payment of required operating expenditures of such property. Property LLC does not have any debts or liabilities and there is no reasonable basis for any legal action with respect to any debt or liability, except for debts or liabilities (i) incurred in connection with the execution of this Agreement; (ii) liabilities reflected on the face of the balance sheet provided to the Company; or (iii) of the type which have arisen since the acquisition of the Property in the ordinary course of business of a commercial office property (none of which are material (in view of prior expenses for the Property) and none of which relate to breach of contract, breach of warranty, tort, infringement, violation of or liability under any Law or any Action). The Property LLC does not owe any money to, nor has it received any advances from or have any liabilities to, any Affiliate of Property LLC, except such as have been irrevocably retired or repaid or contributed to the capital of Property LLC in full, and are considered fully extinguished under GAAP; provided, that an Affilate of Property LLC leases space in the Property without any lease or payment. To the knowledge of the Purchaser, based on the recent broker price opinion and the purchase price paid for the Property, the fair market value of the Property is, as of the date hereof and as of the Closing date, not less than the Subscription Amount.

(ii) Naples LLC is a newly organized entity and does not have any assets or liabilities other than the statutory fees and registered agent fees for its organization and other than it is the sole member of Property LLC.

(h) Material Changes. Since December 31, 2019 (i) there has been no event, occurrence or development that has had or that would reasonably be expected to result in a Material Adverse Effect on or with respect to Purchaser or any Purchaser Subsidiary, (ii) neither the Purchaser nor any Purchaser Subsidiary has incurred any liabilities (contingent or otherwise) other than (A) trade payables and operating expenses of a commercial office building and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Purchaser's financial statements pursuant to GAAP and (iii) the Purchaser and the Purchaser Subsidiaries have not altered, in any material respects, its method of accounting in a manner inconsistent with GAAP.

(i) Litigation. There is no Action pending against Purchaser or any Purchaser Subsidiary or, to the Purchaser's knowledge, threatened, against the Purchaser or any Purchaser Subsidiary which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Preferred LLC Interests (as defined in the LLC Agreement) or (ii) would, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect on Purchaser or any Purchaser Subsidiary. Neither the Purchaser nor any Purchaser Subsidiary, nor, to the Purchaser's knowledge, any director or officer thereof, is or has been within the past three (3) years the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty.

(j) Compliance. Neither the Purchaser nor any Purchaser 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 Purchaser or any Purchaser Subsidiary under), nor has the Purchaser or any Purchaser Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as would not have or reasonably be expected to result in a Material Adverse Effect.

(k) Environmental Laws. The Purchaser and Purchaser Subsidiaries (i) are in compliance with all 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 on Purchaser or any Purchaser Subsidiary.

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

(m) Licenses. Each of the Purchaser Subsidiaries is duly licensed to conduct its business, as applicable, in each jurisdiction where the conduct of the business requires such licensing, and is in compliance in all material respects with all laws requiring such licensing and is not subject to any material liability by reason of the failure to be so licensed. There are no proceedings pending or, to the knowledge of Purchaser, threatened that may result in the revocation, cancellation or suspension, or any adverse modification, of any such material licenses.

(n) Title to Assets. Property LLC has good and marketable title in fee simple to all real property owned by it (includling the Property) and good and marketable title in all tangible personal property owned by them that is material to its business, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by Property LLC, and (ii) Liens for the payment of federal, state or other taxes in the ordinary course, none of which are delinquent in any material respect.

(o) Issuance of the Equity. The limited liability company interests to be issued to the Company pursuant to the LLC Agreement 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 Purchaser or the LLC other than under the terms of the LLC Agreement.

(p) Disclosure. All of the disclosure furnished by or on behalf of the Purchaser to the Company regarding the Purchaser and Purchaser Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct in all material respects, and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(q) Understandings or Arrangements. Purchaser is acquiring the Shares as principal for its own account and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Shares, other than a distribution or transfer to an Affiliate (this representation and warranty not limiting such Purchaser’s right to sell the Shares in compliance with applicable federal and state securities laws).

(r) Experience of Such Purchaser. 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 Shares, and has so evaluated the merits and risks of such investment. Purchaser is able to bear the economic risk of an investment in the Shares and, at the present time, is able to afford a complete loss of such investment.

(s) Access to Information. 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, (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 Shares and the merits and risks of investing in the Shares; (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 possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(t) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, Purchaser has not, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof.

(u) General Solicitation. Such Purchaser is not purchasing the Shares as a result of any advertisement, article, notice or other communication regarding the Shares published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the knowledge of such Purchaser, any other general solicitation or general advertisement.

ARTICLE 4
OTHER AGREEMENTS OF THE PARTIES

4.1. Furnishing of Information.

The Purchaser shall, until the Closing, and shall cause its Affiliates to, afford the Company and its advisors with reasonable access during business hours, at the Company's request, to all due diligence information (legal, business, financial and accounting) as it may reasonably request, including access to employees and advisors, regarding the Purchaser and the Purchaser Subsidiaries (whether in the possession of the Purchaser or its Affiliates), and shall allow copies to be made thereof, all of which shall be subject to the existing confidentiality agreement between the Company and AIU.

4.2. Reservation of Common Stock.

As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Shares pursuant to this Agreement.

4.3. Transfer Restriction.

The Purchaser covenants that neither it nor any Affiliate acting on its behalf or pursuant to any understanding with it will, directly or indirectly, including through transfer of ownership in the Purchaser or its parent entities, execute or permit any sale or assignment, including Short Sales, of or with respect to any of the Shares (as the same may be ratably adjusted for any splits or combinations) during the period commencing with the Closing of this Agreement and ending at such time that the Merger Agreement has been terminated in accordance with its terms.

ARTICLE 5
MISCELLANEOUS

5.1. Termination.

Without prejudice to other remedies which may be available to the parties pursuant to this Agreement, this Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) Mutual Consent. By mutual written consent of the Company and the Purchaser;

(b) Breach of Representations, Warranties, Covenants or Agreements.

(i) By the Purchaser upon delivery of written notice to the Company, if there has been a breach of any representation, warranty, covenant, obligation or agreement made by the Company in this Agreement, which breach (A) would give rise to the failure of a condition set forth in Section 2.3(b)(i) and (B) (I) cannot be cured by the End Date or (II) if capable of being cured, shall not have been cured by the earlier of (x) ten (10) calendar days following receipt of written notice from the Buyer of such breach and (y) the date that is three (3) calendar days prior to the End Date;

(ii) By the Company upon delivery of written notice to the Purchaser, if there has been a breach of any representation, warranty, covenant or agreement made by the Purchaser in this Agreement, which breach (A) would give rise to the failure of a condition set forth in Section 2.3(a)(i) and (B)(I) cannot be cured prior to the End Date or (II) if capable of being cured, shall not have been cured by the earlier of (x) ten (10) calendar days following receipt of written notice from the Company of such breach and (y) the date that is one (1) calendar day prior to the End Date;

(c) End Date. By either the Company or Purchaser upon delivery of written notice to the other if the Closing has not occurred on or before 5:00 p.m., Eastern time, on July 6, 2020 (the "End Date"); provided that a party will not be entitled to terminate this Agreement pursuant to this Section 5.1(c) if such Person's breach of, or failure to fulfill any obligation under, this Agreement or any other Transaction Document has been the primary cause of the failure of the Closing to occur on or prior to such time on the End Date;

(d) Rights Cumulative. In the event of any termination of this Agreement by either the Company or Purchaser as provided in Section 5.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of any Party or any of its Affiliates to any other Person by virtue of, arising out of or otherwise in connection with this Agreement or any other Transaction Document, except that nothing in this Agreement or any other Transaction Document will relieve any party for breach of contract or fraud.

5.2. Fees and Expenses.

Except as expressly set forth 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 by the Company and any exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Shares to the Purchasers.

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 attachment 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 facsimile at the facsimile number or email attachment 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 (2nd)Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

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 the Purchaser. 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; Legends.

(a) 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 (other than by merger).

(b) Subject to the transfer restrictions herein, the Purchaser may, upon written notice, assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Shares that is an Affiliate of the Purchaser, provided that such transferee agrees with the Company in writing to be bound, with respect to the transferred Shares, by the provisions of the Transaction Documents that apply to the Purchaser.

(c) The certificates representing the Shares shall contain a customary Securities Act restrictive legend and a restrictive legend noting the transfer restrictions required hereby by Section 4.3. The Securities Act legend will be removed in connection with the registration of the Shares as are registered under the Securities Act pursuant to the Registration Rights Agreement or otherwise; or at such time as the Company receives a legal opinion reasonably satisfactory to it that such legend may be removed as a result of compliance with Rule 144 under the Securities Act.

5.8. No Third-Party Beneficiaries.

This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in this Section 5.8.

5.9. Governing Law.

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

(a) The representations and warranties contained herein shall survive the Closing and the delivery of the Shares and Preferred LLC Interests for a period of three years after the Closing.

(b) Each party hereby agrees to indemnify the other and its respective Affiliates and each of their respective officers, directors, stockholders, managers, members, partners, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties") and hold each of them harmless from and against and pay on behalf of or reimburse any such Indemnified Party in respect of the entirety of any loss, damage, expense (including attorney's fees and expenses), liability or claim ("Losses"), in each case, whether or not involving a third party claim, which such Indemnified Party may suffer, sustain or become subject to, as a result of, arising out of, relating to or in connection with: (a) the breach or inaccuracy of any representation of such party contained in this Agreement; and (b) the breach, non-compliance or non-performance of any covenant, agreement or obligation by such party contained in this Agreement, it being acknowledged that the Purchaser and the Company shall not have any obligation to an Indemnified Party (except in the case of fraud) in excess of the sum of $1,600,000 plus reasonable expenses and legal fees incurred in connection with the enforcement of such party's indemnity rights hereunder and there shall not be any obligation with respect to the first $10,000 of Losses and further that no party shall be liable with respect to any exemplary or punitive damages that arise out of or relate to this Agreement or any liability or responsibility assumed or retained hereunder.

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. Replacement of Shares.

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

5.14. Remedies.

In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the 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.

5.15. Saturdays, Sundays, Holidays, etc.

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

5.16. 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.

5.17. WAIVER OF JURY TRIAL.

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

(Signature Pages Follow)

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

THE COMPANY

Superconductor Technologies Inc.

By: /s/ Jeff Quiram
Name: Jeffrey A. Quiram
Title: Chief Executive Officer

Address for Notice:
15511 W. State Hwy 71,
Suite 110-105,
Austin, TX 78738
Attn.: Jeffrey A. Quiram
E-mail: jquiram@suptech.com

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

Proskauer Rose LLP
2029 Century Park East
Los Angeles, CA 90067

Attn.: Ben Orlanski, Esq, Matthew O'Loughlin, Esq.
Email: borlanski@proskauer.com and moloughlin@proskauer.com

PURCHASER

Clearday Naples LLC

By: /s/ Jim Walesa
Name: James Walesa
Title: Chief Executive Officer

Address for Notice:
8800 Village Drive
San Antonio, TX 78217
Attn.: James Walesa
E-mail:-jim@myclearday.com

Subscription Amount: $ 1,600,000 (one million six hundred thousand dollars) (payable in full through delivery of the signature page to the LLC Agreement and transfer and assignment to Purchaser of the Preferred Equity Interest)

Shares of the Company to be received: Four Million shares of common stock of the Company.

In consideration for its 100% ownership of the Purchaser and the benefits to be derived therefrom, and as a material inducement to the Company, the undersigned hereby agrees to be jointly and severally liable for the oblgigations and liabilities of the Purchaser hereunder under Section 5.10(b):

Allied Integral United, Inc.

By: /s/ Jim Walesa
Name: James Walesa
Title: Chief Executive Officer

EXHIBIT A

FORM OF LLC AGREEMENT

[attached hereto]

EXHIBIT B

FORM OF REGISTRATION RIGHTS AGREEMENT

[attached hereto]

DISCLOSURE SCHEDULES

OF THE COMPANY

AND

OF THE PURCHASER

Schedule 3.2(a)

Purchaser Subsidiaries as of the Closing Date

Naples JV, LLC (the Company)

AIU 8800 Village Drive, LLC, a Delaware limited liability company

Schedule 3.2(f)

Capitalization as of the Closing Date prior to the Closing

Purchaser ® is the sole member of Naples JV, LLC

Naples JV, LLC ® is the sole member of AIU 8800 Village Drive, LLC

Exhibit 10.2

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

of

NAPLES JV, LLC

LIMITED LIABILITY COMPANY AGREEMENT
Of
NAPLES JV, LLC
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AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT
OF
NAPLES JV, LLC

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of Naples JV, LLC, a Delaware limited liability company (the "Company"), dated as of July 6, 2020 (this "Agreement"), by and among the following:

1. the Company;

2. Superconductor Technologies Inc., a Delaware corporation (the "Superconductor Member"); and

3. Clearday Naples LLC**,** a Delaware limited liability company ("Clearday Member," and, together with the Superconductor Member and any Person duly admitted as a member in the Company in accordance with the provisions of this Agreement, collectively, the "Members").

Unless otherwise expressly set forth in this Agreement, all capitalized terms used in this Agreement shall have the meaning ascribed thereto in Section 1.

WHEREAS, on June 26, 2020 the Company was formed as a Delaware limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, as amended, Title 6 §§18-101 et seq. (the "Act");

WHEREAS, the Company is the sole Member of AIU 8800 VILLAGE DRIVE, LLC, a Delaware limited liability company ("Property Owner");

WHEREAS, the Superconductor Member and an affiliate of the Clearday Member are parties to that certain Agreement and Plan of Merger dated as of February 26, 2020, as amended (the "Merger Agreement");

WHEREAS, in connection with the formation of the Company the Superconductor Member delivered to Allied Integral United, Inc., a Delaware corporation ("Clearday"), an affiliate of Clearday Member, shares of common stock of the Superconductor Member;

WHEREAS, the original Limited Liability Company Agreement of the Company, dated as of June 26, 2020 (the "Original Agreement"), provided for Common LLC Interests and Preferred LLC Interests, both of which were owned by the Clearday Member, and through transfers by the Clearday Member to its Affiliates, all of such Preferred LLC Interests have been transferred to the Superconductor Member as of the date hereof, while the Clearday Member has retained all of its Common LLC Interests;

WHEREAS, the Members desire to provide for the stability and continuity of the management of the affairs of the Company and to impose certain rights and restrictions with respect to the transfer or other disposition of their membership interests upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to amend and restate the Original Agreement in its entirety as follows:

1. Certain Defined Terms.

For the purposes of this Agreement, the following terms used in this Agreement shall be defined as set forth in this Section 1 and terms that are defined elsewhere in this Agreement are referenced in Schedule II:

(i) "Adjusted Capital Account Deficit". Means with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant taxable year, after:

(A) crediting to such Capital Account any amounts that such Member is obligated to restore to the Company pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(3), is treated as obligated to restore pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(B) debiting from such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

(C) The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(ii) "Affiliate". With respect to any Person means: (i) any Person at the time directly or indirectly Controlling, Controlled by or under direct or indirect common Control with such Person; and (ii) any executive officer or director (or a person with similar responsibilities) of such Person.

(iii) "Approved Accountant". Means Friedman LLP or Marcum LLP, or such other certified public accounting firm approved by Mutual Consent.

(iv) "Bankruptcy Code". Means United States Bankruptcy Code (Title 11, U.S.C.), as amended.

(v) "Bankruptcy Event". Means any of the following events:

(A) filing any voluntary petition in bankruptcy pursuant to the Bankruptcy Code on behalf of the Company or any Subsidiary;

(B) not defending the filing of any involuntary petition under the Bankruptcy Code against the Company or any Subsidiary;

(C) filing of any petition with respect to the Company or any Subsidiary seeking reorganization or relief under any applicable law relating to bankruptcy or insolvency;

(D) not objecting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or any Subsidiary or a substantial part of their respective assets;

(E) making any assignment with respect to the Company or any Subsidiary for the benefit of creditors; or

(F) taking of any action by the Company or any Subsidiary in furtherance of any such action described in this definition.

(vi) "Board". Means the board of managers of the Company.

(vii) "Capital Account". Means an account to be maintained for each Member in accordance with the Code and Treasury Regulations, which, subject to any contrary requirements of the Code and Treasury Regulations, shall be:

(A) increased by:

(1) the amount of money and the gross fair market value of property contributed by such Member to the Company, if any, in accordance with the express terms of this Agreement;

(2) the amount of any Company liabilities that are assumed by such Member pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(c);

(3) allocations to such Member of Profits pursuant to Section 11; and

(4) any items in the nature of income or gain which are specially allocated to such Member pursuant to Section 11 or otherwise as expressly provided by this Agreement; and

(B) decreased by:

(1) the amount of money and the gross fair market value of property distributed to such Member by the Company, in accordance with the express terms of this Agreement;

(2) the amount of such Member's individual liabilities that are assumed by the Company pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(c);

(3) allocations to the Member of Losses pursuant to Section 11; and

(4) any items in the nature of loss or deduction which are specially allocated to such Member pursuant to Section 11 of this Agreement or otherwise as expressly provided by this Agreement, including Section 4(d)(ii)(A)

The Members' respective Capital Accounts shall be determined and maintained at all times in accordance with all the provisions of Treasury Regulations Section 1.704-1(b) and this definition and other provisions of this Agreement relating to the maintenance of Capital Accounts and/or the determination and allocation of Profits, Losses, items thereof and items allocated pursuant to Section 11 shall be interpreted and applied in a manner consistent with such Treasury Regulations.

(viii) "Capital Event Proceeds" shall consist of the net amount of cash received by the Company from the sale, exchange, refinancing (net of amounts used to repay existing indebtedness), leveraged recapitalization (i.e., borrowing against assets and distribution of the proceeds of such borrowing), condemnation, casualty loss or other disposition by the Company or the Property Owner of its assets outside of the ordinary course of business, less (i) the portion thereof disbursed by the Board for the payment of the Company's debts and expenses and (ii) such other reserves for the future debts, expenses and plans and contingencies of the Company as the Board may establish. Capital Event Proceeds shall include amounts distributed to the Company as an owner of another entity, including any Subsidiary (including the Property Owner), to the extent that the amount distributed, in the hands of the distributing entity, is in the nature of Capital Event Proceeds. Amounts released from a reserve of Capital Event Proceeds shall be treated as Capital Event Proceeds.

(ix) "Code". Means the Internal Revenue Code of 1986, as amended.

(x) "Common Member". Means any Member that holds a Common LLC Interest.

(xi) "Control". Means the possession of the power to direct or cause the direction of, directly or indirectly, the management of a Person, whether through ownership of voting rights, by contract or otherwise; and the terms "Controlling" and "Controlled" shall have a correlative meaning.

(xii) "Depreciation". Means, for each taxable year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for the taxable year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the

beginning of the taxable year or other period, Depreciation will be an amount which bears the same ratio to the beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for the taxable year or other period bears to the beginning adjusted tax basis, provided that if the federal income tax depreciation, amortization, or other cost recovery deduction for the taxable year or other period is zero, Depreciation will be determined with reference to the beginning Gross Asset Value using any reasonable method selected by the Board in its sole discretion.

(xiii) "Emergency Expenditure". Means a payment obligation of the Company or one of its Subsidiaries that: (a) is, at the time of the applicable Capital Call Funding Date, either past due or due within ten (10) days; and (b)(i) the nonpayment of such obligation would cause a violation of law, a Lien on the property or assets of the Company or one of its Subsidiaries; or (ii) the payment of such obligation is required to prevent a foreclosure or other legal process against the Company or one of its Subsidiaries.

(xiv) Fiscal Year" means (i) the period commencing on the date that the Company was formed and ending on December 31, 2020, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31 or (iii) any portion of the period described in clause (ii) for which the Company is required to allocate Net Profit, Net Loss and other items of Company income, gain, loss or deduction pursuant to Section 11(c).

(xv) "Gross Asset Value". Means, with respect to any asset, the following:

(A) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined in accordance with paragraph (F) of this definition;

(B) The Gross Asset Values of all assets of the Company shall be adjusted to equal their respective gross fair market values, as determined in accordance with paragraph (F) of this definition, as of the following times:

(1) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;

(2) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and

(3) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g). Notwithstanding the foregoing, the adjustments pursuant to clauses (1) and (2) above shall be made only with the Mutual Consent that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(C) The Gross Asset Value of any Company asset distributed to any Member shall be determined by the Mutual Consent as of the date of distribution in accordance with paragraph (F) of this definition;

(D) The Gross Asset Value of the assets of the Company shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subsection (vi) of the definition of Profits and Losses; provided, however, that Gross Asset Value shall not be adjusted pursuant to this paragraph (D) to the extent that an adjustment was made pursuant to paragraph (B) of this definition in connection with any transaction that would otherwise have resulted in an adjustment pursuant to this paragraph (D) of this definition;

(E) In all other cases, the Gross Asset Value of an asset shall be its adjusted basis for federal income tax purposes; and

(F) For purposes of determining the Gross Asset Value of any asset (other than cash), the gross fair market value shall be as determined by Mutual Consent.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraph (A), (B), or (D) of this definition, the Gross Asset Value of such asset shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(xvi) "Lien". Means any mortgage, pledge, security interest, restriction or any other lien or other encumbrance, in each case, other than the terms and provisions of this Agreement.

(xvii) "Losses". Shall have the meaning specified in the definition of "Profits and Losses."

(xviii) "Manager". Means a manager of the Company that is a member of the Board.

(xix) "Member Nonrecourse Debt". Means any "partner nonrecourse debt" or "partner nonrecourse liability" as defined in Treasury Regulations Section 1.704-2(b)(4).

(xx) "Member Nonrecourse Debt Minimum Gain". Means a Member's share of "partner nonrecourse debt minimum gain" as determined pursuant to Treasury Regulations Section 1.704-2(i)(5).

(xxi) "Member Nonrecourse Deductions". Means "partner nonrecourse deductions" as defined in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

(xxii) "Minimum Gain". Means "partnership minimum gain" as determined pursuant to Treasury Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

(xxiii) "Net Invested Capital". Means, with respect to the initial Preferred Member as of any given date, the aggregate Capital Contributions of such Preferred Member, which is equal to $1,600,000.

(xxiv) "Net Unreturned Invested Capital". means, with respect to each Preferred Member as of any given date, such Preferred Member's Net Invested Capital, less all amounts distributed to such Preferred Member (other than through tax distributions), but not less than zero.

(xxv) "Nonrecourse Deductions". Shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(1).

(xxvi) "Percentage Interest". Means, with respect to all Members, the percentage set forth opposite such Member's name on Schedule A attached hereto. In the event any LLC Interest is Transferred in accordance with the provisions of this Agreement, the transferee of such LLC Interest that is admitted as a Member shall succeed to the Percentage Interest of the transferor to the extent it relates to the Transferred LLC Interest.

(xxvii) "Person". Means any entity or individual, including any corporation, limited liability company, partnership, fund, trust, foundation, government, government agency or authority.

(xxviii) "Preferred Member". Means any Member that holds a Preferred LLC Interests.

(xxix) "Profits and Losses". Means for each taxable year or other period, an amount equal to the Company's taxable income or loss determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction, whether or not required to be stated separately pursuant to Code Section 703(a)(1), shall be included in taxable income or loss), with the following adjustments:

(A) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(B) Any Code Section 705(a)(2)(B) expenditures of the Company (or expenditures treated as such pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)) that are not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss;

(C) If the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account in the year of such adjustment as gain or loss from the disposition of such asset, for purposes of computing Profits or Losses;

(D) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes (or is deemed realized pursuant to paragraph (iii) above) shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(E) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such taxable year or other period;

(F) To the extent that a Code Section 734(b) or Code Section 743(b) adjustment is required to be taken into account in determining Capital Accounts, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses;

(G) Notwithstanding anything to the contrary in the definition of the terms "Profits" and "Losses," any items that are specially allocated pursuant to this Agreement other than as a part of a special allocation of Profits or Losses as such shall be excluded in computing Profits or Losses; and

(H) For purposes of this Agreement, any deduction for a loss on a sale or exchange of Company property that is disallowed to the Company under Code Section 267(a)(1) or Code Section 707(b) shall be treated as a Code Section 705(a)(2)(B) expenditure.

(xxx) "Property Owner Interests". Means all of the limited liability company interests in Property Owner.

(xxxi) "Subsidiary". With respect to any specified Person, means each Affiliate in which more than 50% of the economic interests in the Affiliate is owned by the specified Person.

(xxxii) "Third Party". Means any Person that is not a Member.

(xxxiii) "Transfer". Means to sell, exchange, assign, pledge, hypothecate or otherwise encumber or dispose of (whether with or without consideration and whether voluntarily or involuntarily or by operation of law), directly or indirectly, at any tier of ownership, all or any fraction of an LLC Interest of a Member in the Company or the entering into of any agreement as a result of which any other Person shall have rights with respect to a Member's LLC Interest. A Transfer shall also include, with respect to a Member that is not a natural person, the direct or indirect sale, transfer, exchange, assignment, pledge, hypothecation or other encumbrance or disposition of any interest in any such Member by any direct or indirect owner thereof.

(xxxiv) "Treasury Regulations". Means permanent and temporary regulations promulgated (and, subject to consent of all of the Members as regulations proposed) by the United States Department of the Treasury, as such regulations may be lawfully changed from time to time.

2. Formation.

(a) Formation; Name; Office.

The Clearday Member formed the Company under and pursuant to the Act to be conducted under the name "Naples JV, LLC". The business office of the Company shall be 8800 Village Drive, 2nd Floor, San Antonio, Texas 78217 or at such other place or places as the Board may from time to time designate.

(b) Purposes.

The purposes for which the Company has been formed are:

(i) to directly or through one or more of its subsidiaries, hold, manage, finance or refinance and dispose of the investment of the Company in the Property Owner; and

(ii) to engage in any other lawful business or purpose from time to time determined by the Mutual Consent of the Members;

(iii) to engage in all activities necessary, customary, convenient or incident to any of the foregoing, including without limitation, conducting all operations of the Company and its Subsidiaries.

(c) Term.

This Company continues since the Original Agreement and this Agreement shall commence on the date of this Agreement and shall end upon the termination of this Agreement as provided in Section 12.

(d) Registered Office and Resident Agent.

The registered office and the resident agent of the Company shall be as designated in the certificate of formation of the Company (the "Certificate") or any amendment thereof. The registered office and the resident agent may be changed from time to time by the Board in accordance with the Act. If the resident agent shall ever resign, then the Board shall promptly appoint a successor resident agent and shall file an appropriate amendment to the Certificate.

(e) Article 8 of the Uniform Commercial Code.

The LLC Interests shall for all purposes of the Uniform Commercial Code (as adopted by the State of Delaware) constitute "Securities", as such term is defined by Article 8 thereof.

3. Capital Contributions; LLC Interests.

(a) Initial Capital Contributions.

(i) Simultaneously with the execution and delivery of this Agreement, each Member hereby is deemed to have contributed to the Company assets with a Gross Asset Value equal to the following:

(A) The Clearday Member: $1,600,000.00

(B) The Superconductor Member: $1,600,000.00.

(ii) The initial capital contribution of each Member pursuant to this Section 3(a) is referred to in this Agreement as an "Initial Capital Contribution". The Initial Capital Contribution of each Member together with any other contribution to the Company's capital (except, as provided in Section 4(d)(ii)(A), for the interest contributed by a Defaulting Member with respect to its Capital Default Loan), including any Additional Capital Contribution, is referred to in this Agreement as a "Capital Contribution".

(b) Issuance of LLC Interests.

(i) In consideration of the foregoing, on the date of this Agreement the Company shall recognize, acknowledge and reflect on its books that each Member holds and owns as of the date hereof (by virtue of prior issuance or transfer) a limited liability company interest (as defined by the Act) in the Company (a "LLC Interest") as follows:

(A) the Superconductor Member, a LLC Interest with the preferences in the liquidation and dissolution of the Company set forth in Section 12(d) ("Preferred LLC Interests"), which interests have a Percentage Interest of such class of LLC Interests equal to 100% of such class of LLC Interests and a Percentage Interest in the Company as set forth in Schedule I to this Agreement; and

(B) Clearday Member a LLC Interest that is pari passue with the Preferred LLC Interests in all respects, other than the economic rights in the liquidation and dissolution of the Company set forth in Section 12(d) ("Common LLC Interests"), which interests have a Percentage Interest of such class of LLC Interests equal to 100% of such class of LLC Interests and a Percentage Interest in the Company as set forth in Schedule I to this Agreement.

(ii) The other rights, benefits and preferences of the Preferred LLC Interests and Common LLC Interests, and the obligations and restrictions with respect thereto are as provided in this Agreement.

(c) Certificates.

The LLC Interests of the Company shall be represented by a certificate in the form attached hereto as Exhibit A. Each certificate representing LLC Interests shall have the legend endorsed thereon in the form provided in Exhibit A and such other legends as may be approved from time to time by the Board. Each such certificate shall be signed in the name of the Company by the Manager designated by the Board in the manner approved by the Board. The Company shall issue a new certificate to replace a lost, mutilated, stolen or destroyed certificate pursuant to the procedures then approved by the Board. Any such certificate may note the number of units (each, a "Unit") represented by such LLC Interests. As of the initial date of this Agreement, there shall be 50 Units representing the Common LLC Interests and 50 Units representing the Preferred LLC Interests.

(d) Schedule of LLC Interests.

Schedule I shall reflect the name and address of each Member and the Percentage Interest of each Member. Schedule I shall be amended by the Board to reflect any changes to the Percentage Interest of each Member expressly permitted under this Agreement, including changes resulting from the redemption or sale of any LLC Interest or any Additional Capital Contribution.

(e) No Interest in any other Capital Account.

The provisions of this Section 3 shall not give any Member an interest in any amount credited to the capital account of any other Member.

(f) Members' Liability.

Except as otherwise expressly provided in this Agreement, the liability of a Member, solely as Member, for any obligations, debts or liabilities incurred by the Company (as opposed to such Member directly on its own behalf in its individual capacity) shall be limited to the aggregate amount of the Capital Contributions that such Member has made or is obligated to make to the Company under the terms and provisions of this Agreement.

(g) Uses of Capital Contributions; No Preferred Return.

All Capital Contributions shall be utilized by the Company for the purposes of the Company. Except as otherwise expressly provided in this Agreement, no interest or preferred return shall accrue on any Capital Contribution.

(h) Withdrawal of Capital.

Unless the prior unanimous written consent of the Members shall have been obtained and except as otherwise expressly provided in this Agreement (including Section 4(d)(i)(A)(1)), no Member shall have the right to withdraw any part of such Member's Capital Contributions prior to the liquidation and termination of the Company pursuant to Section 12.

(i) Source of Distributions.

No Member, Manager or any of their respective Affiliates shall be personally liable for the return of the Capital Contributions of any other Member, or any portion thereof, it being expressly understood that any such return shall be made solely from the Company's assets.

4. Additional Capital Contributions.

(a) Capital Call.

The Board shall provide a notice (a "Capital Call Notice") to the Members promptly after it determines that the Company or its Subsidiaries require funds in addition to their available cash to pay or otherwise discharge or settle their obligations. A Capital Call Notice will state:

(i) the amount of funds to be contributed to the capital of the Company ("Additional Capital Contribution");

(ii) the proposed use for the Additional Capital Contribution;

(iii) the aggregate Percentage Interests that are represented by such Additional Capital Contributions; and

(iv) the date ("Capital Call Funding Date") that the Members shall fund their pro rata share of the Additional Capital Contribution (determined on the basis of their respective Percentage Interests as of the date of the Capital Call Notice), which date shall not be earlier than fourteen (14) days after the date that the Capital Call Notice is delivered, provided that if the Additional Capital Contribution is required to pay an Emergency Expenditure, then the Capital Call Funding Date may be any date that from and after two (2) business days after the date that the Capital Call Notice is delivered.

(b) Mutual Consent.

The Capital Call Notice shall not be deemed effective unless and until there is Mutual Consent for such Capital Call Notice.

(c) Additional Capital Call Closing.

The closing of an Additional Capital Contribution shall be held at 10:00 a.m. (local time) at the principal offices of the Company on the Capital Call Funding Date or at such other location or time as may be agreed by Clearday Member and the Superconductor Member. At the closing of an Additional Capital Contribution, each Member shall pay to the Company an amount equal to its Percentage Interest (determined as of the date of the Capital Call Notice) multiplied by the aggregate amount of the Additional Capital Contribution stated in the Capital Call Notice.

(d) Capital Funding Default.

(i) Capital Default Loans.

(A) In the event a Member (a "Defaulting Member") does not fully fund the amount of the Additional Capital Contribution to be funded by such Member on the Capital Call Funding Date and such default continues for three (3) business days (the date that such cure or grace period expires being the "Funding Default Date"), then the other Member ("Non-Defaulting Member"), if such other Member fully paid the amount of its Additional Capital Contribution on or prior to the Funding Default Date, shall have the right to elect one (but not both) of the following:

(1) demand and receive from the Company the full and immediate return of the Additional Capital Contribution funded by the Non-Defaulting Member (the "Cancel Option"); or

(2) provide a loan to the Company (a "Capital Default Loan") in an amount (the "Shortfall Amount") equal to such portion of the Additional Capital Contribution not made by the Defaulting Member as of the Funding Default Date (the "Loan Option").

(B) If the Cancel Option is not exercised within five (5) business days after the Funding Default Date by the Non-Defaulting Member providing notice to such effect to the Company and the Defaulting Member, then the Cancel Option shall be forfeited and the Non-Defaulting Member shall have the right, but not the obligation, to exercise the Loan Option (but will not have a right to withdraw its Additional Capital Contribution in accordance with this Section 4).

(C) If the Cancel Option was not duly and timely exercised by the Non-Defaulting Member, then the Non-Defaulting Member may exercise the Loan Option by providing the Company and the Defaulting Member(s) a notice to such effect on or prior to the date that is ten (10) business days after the Funding Default Date. If the Non-Defaulting Member duly and timely exercised the Loan Option, then the Non-Defaulting Member shall make a Capital Default Loan to the Company in an amount equal to the Shortfall Amount on or prior to the date that is fifteen (15) business days after the Funding Default Date, provided that if the Non-Defaulting Member fails to so timely fund the Capital Default Loan then it will be deemed to have not elected the Loan Option or the Cancel Option and its prior Capital Contributions shall not be subject to return pursuant to Section 4(d)(i)(A)(1).

(D) A Capital Default Loan shall accrue interest at the rate (the "Capital Default Loan Rate") equal to the lesser of: (i) twenty percent (20%), per annum, compounded annually on the basis of the actual number of days outstanding divided by the actual number of days (365 or 366) of the year; and (ii) the maximum interest rate permitted to be charged by applicable law. Capital Default Loans shall

be paid prior to any distributions on account of any LLC Interests in the order made and as and when the Company has sufficient cash resources. No Capital Default Loan will increase the Percentage Interest of a Member unless and to the extent that the amount of the Capital Default Loan is converted and then contributed to the Company's capital in accordance with the provisions of Section 4(d)(ii).

(ii) Conversion of a Capital Default Loan.

(A) A Defaulting Member shall have the right, but not the obligation, to repay and redeem the Capital Default Loan or Capital Default Loans made with respect to its failure to fully fund its Additional Capital Contribution on the Capital Call Funding Date by purchasing all but not less than all, of the Capital Default Loan by contributing cash to the Company in an amount equal to the principal of the Capital Default Loan plus the accrued interest thereon (determined at the Capital Default Loan Rate to the date of such contribution) on any business day (on or before noon of such business day) that is on or prior to ninety (90) days after the Funding Default Date. On the same date that the Defaulting Member makes such contribution, the Company shall repay to the Non-Defaulting Member the Capital Default Loan in full, together with the interest thereon. On the date of such payment, the Percentage Interests of the Members shall be adjusted to reflect an Additional Capital Contribution by the Defaulting Member equal to the principal amount of the Capital Default Loan but the amount of the interest with respect to such Capital Default Loan that was contributed to the capital of the Company by the Defaulting Member shall not be deemed a Capital Contribution for the purposes of this Agreement and shall not increase or otherwise adjust the Percentage Interest of any Member. Notwithstanding the provisions of Section 11(c), all of the interest deduction recognized by the Company arising from the payment of interest on a Capital Default Loan shall, if such loan is repaid as provided in this Section 4(d)(ii)(A), be allocated to the Non-Defaulting Member.

(B) A Member that holds a Capital Default Loan shall have the right ("Conversion Right"), but not the obligation, to contribute all or any part of the principal balance of the Capital Default Loan and the accrued and unpaid interest thereon to the capital of the Company and thereby increase its Percentage Interest. Such right may be exercised by a Member that holds a Capital Default Loan by delivering the Company and the Defaulting Member a notice ("Conversion Notice") to such effect at any time; the Conversion Notice shall state the amount ("Converted Amount") of principal and interest that is contributed to the Company's capital by the Non-Defaulting Member. The conversion of the Capital Default Loan (or part thereof) to a Capital Contribution shall be effective the date the Conversion Notice is delivered to the Company and the Defaulting Member.

(C) A Member that holds a Capital Default Loan and delivers a Conversion Notice shall be deemed to have made a Capital Contribution to the Company in an amount equal to 125% of the Converted Amount in satisfaction of the obligation of the Company to such Member in respect of that portion of the Capital Default Loan equal to the Converted Amount.

(D) Unless and until the Conversion Right is duly exercised, a Capital Default Loan that was not contributed to the capital of the Company shall remain outstanding and be repaid by the Company in accordance with the express terms of this Agreement.

5. Title to the Property of the Company.

(a) Title to the Property of the Company.

Title to the Property Owner Interest and any and all other property owned by the Company shall be held in the name of the Company. No Member, individually or collectively, shall have, or shall be deemed to have, any title in or to any such property.

6. Transfer of LLC Interest.

(a) General Restrictions.

(i) Unless and until the Merger Agreement is terminated, no Member shall transfer any LLC Interest to any Person other than an Affiliate of such Member.

(ii) Except as otherwise expressly provided in this Section 6, during the term of this Agreement, no Member shall Transfer, or permit a Transfer of, any LLC Interest without the prior consent of the Superconductor Member and Clearday Member.

(iii) Any Transfer effected or purported or attempted to be effected: (A) not in accordance with the terms and conditions of this Agreement; (B) to an individual younger than 18 years of age or who has been adjudged incompetent or insane; or (C) to a person prohibited by law from owning any LLC Interest, shall be void ab initio and shall not bind the Company or any Member.

(b) Approved Transfers.

Notwithstanding the provisions of Section 6(a) and subject to the provisions of Section 6(c), each Transfer described in this Section 6(b) (each, an "Approved Transfer") shall be permitted:

(i) a Transfer may be effected after the Merger Agreement has been terminated to a Third Party subject to the compliance with the provisions of Section 6(c) and Section 7; and

(ii) any of the following Transfers may be consummated without the consent of any other Member and shall not be subject to the ROFO under Section 7:

(A) *Upper Tier Transfers*. Any Transfer of ownership interests in a Member.

(B) *Affiliate*. A Transfer to any Affiliate of a Member.

(C) *Company or Member.* A Member may Transfer LLC Interests to the Company or any other Member pursuant to this Agreement or otherwise.

(c) Conditions to an Approved Transfer.

Notwithstanding the provisions of Section 6(b), an Approved Transfer shall not be permitted, in each case, if:

(i) such Transfer requires the registration of any LLC Interests or any other security issued or issuable by the Company under the Securities Act of 1933, as amended (the "1933 Act"), or any state securities or "Blue Sky" laws (other than notice filings in connection with a transaction exempt from the registration requirements of the 1933 Act);

(ii) such Transfer requires the Company to register as an investment company under the Investment Company Act of 1940, as amended;

(iii) such Transfer does not comply with all applicable federal and state securities and "Blue Sky" laws;

(iv) such Transfer causes a violation of the Employee Retirement Income Security Act of 1974,as amended, by the Company or any of its Members;

(v) such Transfer is to a person that is listed on the Specially Designated Nationals List by the Office of Foreign Assets Control of the United States Department of the Treasury (or any successor or similar list);

(vi) the Company does not receive all documentation reasonably requested by the Company to evidence that such Transfer is permitted under this Agreement; and

(vii) with respect to a sale or other conveyance of LLC Interests, the Company does not, prior to the effective date of such sale or conveyance, receive a notice stating the Percentage Interest that is sold or conveyed and the certificate representing such LLC Interests accompanied with an assignment of all of the LLC Interests represented thereby executed in blank.

(d) No Admission of Third Party As A Member.

The Members each agree that they will not transfer or assign the record ownership of any of their LLC Interest to a Third Party unless such Third Party purchases all, but not less than all, of the LLC Interest of such Member. Accordingly, no Third Party will hold, directly, any LLC Interest or be admitted in the Company as a member, unless otherwise determined by Mutual Consent or such Third Party acquires all, but not less than all of the selling Member's LLC Interest. In accordance with the express terms of this Agreement, any sale or conveyance of any part of the LLC Interest to a Third Party referred to in this Agreement shall be effected by: (i) the Member or an owner of the Member transferring and assigning a separate class of limited liability company interests in itself and admitting the Third Party as a member in itself, with the Third Party holding (by virtue of its ownership of equity interests in the selling Member or an owner of the Member) an indirect ownership of the LLC Interests of the selling Member, free and clear of all Liens other than the provisions of this Agreement; or (ii) as an assignment or other Transfer of economic interest only; or (iii) if all but not less than all of the LLC Interest of the selling Member is sold in accordance with the express terms of this Agreement, by the transfer of record ownership of such LLC Interest, in which case, upon such Third Party signing a counter-part to this Agreement, subject to the provisions of Section 6(c), such Third Party shall be admitted as a Member in the Company with all of the rights and obligations under this Agreement and the Act of the selling Member with respect to such sold LLC Interest.

(e) Remedies For Breach of Transfer Provisions.

In the event that there is any Transfer of LLC Interests that is not in compliance with the terms and conditions of this Agreement, then:

(i) the Member holding the LLC Interests subject to such invalid Transfer shall be deemed to have breached the terms of this Agreement and shall indemnify and hold harmless the Company and the other Member from and against any and all liabilities or damages to such party by reason of such act including, without limitation, actual attorneys' fees and disbursements incurred by any such indemnified party in connection with any such act as and when such liabilities or damages are determined and such expenses are incurred; and

(ii) the Member holding such LLC Interests shall lose all rights (including, without limitation, all governance rights and the right to make an Additional Capital Contribution) and benefits under this Agreement other than the right to the return of its unreturned Capital Contributions as and when the Company distributes the Capital Contributions of the other Members.

7. Right of First Offer.

(a) ROFO Offer.

(i) Each Member may propose to sell the rights to any or all of its LLC Interests to a Third Party (such Member being referred to in this Agreement as the "ROFO Selling Member"), for cash consideration subject to the right (the "ROFO"), but not the obligation, of the other Member ("ROFO Buying Member") to purchase the Percentage Interest of the LLC Interests whose rights are proposed to be sold by the ROFO Selling Member ("ROFO Interests"). For avoidance of doubt the ROFO is not applicable to any Approved Transfer pursuant to the provisions of Section 6(b)(ii).

(ii) A ROFO Selling Member shall, prior to soliciting any offer to sell any ROFO Interests, provide the Company and the ROFO Buying Member a notice ("ROFO Notice") stating the :

(A) Percentage Interest represented by the ROFO Interests;

(B) aggregate purchase price ("ROFO Price") for the ROFO Interests; and

(C) amount of the purchase price deposit ("ROFO Deposit") required to be provided upon acceptance of the offer, which shall be equal to twenty percent (20%) of the ROFO Price.

(iii) It is acknowledged and agreed that the ROFO Interests that are acquired by a Member shall be acquired by the ROFO Buying Member free and clear of all Liens.

(b) ROFO Acceptance.

(i) A Member may exercise its ROFO by delivering a notice (the "ROFO Acceptance Notice") to the ROFO Selling Member to such effect on or prior to the date that is thirty (30) days after the date that the ROFO Notice was delivered to the ROFO Buying Member (the "ROFO Acceptance Period"). Any exercise of the ROFO will irrevocably obligate the ROFO Buying Member to purchase all of the ROFO Interests in accordance with the provisions of this Section 7.

(ii) On or prior to the date that is five (5) business days after the expiration of the ROFO Acceptance Period, the ROFO Buying Member shall deliver the ROFO Deposit to the ROFO Selling Member, which shall be held by the attorney representing the ROFO Selling Member in such attorney's escrow account;

(iii) If the ROFO Buying Member does not timely provide the ROFO Acceptance Notice and the ROFO Deposit in accordance with the provisions of Sections 7(b)(i) and 7(b)(ii), then the ROFO will be deemed rejected and the provisions of Section 7(c) shall apply.

(c) ROFO Rejection.

(i) If the ROFO Buying Member did not duly and timely deliver the ROFO Acceptance Notice and duly and timely pay the ROFO Deposit in accordance with Sections 7(b)(i) and 7(b)(ii), then the ROFO will be deemed rejected and the ROFO Selling Member shall be entitled to sell all, but not less than all, of the ROFO Interests to a Third Party at an aggregate purchase price equal to or greater than 98% of the ROFO Price and on such other terms and conditions agreed by the ROFO Selling Member and the Third Party that are no more favorable than the terms and conditions of the ROFO specified in the ROFO Notice (for example, the ROFO Selling Member may provide representations, warranties and indemnities to the Third Party, but the beneficial interest in the ROFO Interest shall not be subject to any Lien), if each of the following conditions are satisfied:

(A) The Third Party enters into a binding written contract to acquire the ROFO Interests (a "Third Party ROFO Contract") no later than sixty (60) days after the date that the ROFO was rejected or deemed rejected;

(B) The Third Party is required to, and in fact provides, a purchase price deposit equal to the ROFO Deposit on the date that the Third Party and the ROFO Selling Member enter into a Third Party ROFO Contract;

(C) The Third Party purchases the ROFO Interests and pays for the ROFO Interests in full on the date that is not later than one-hundred and fifty days (150) after the date that the ROFO was rejected or deemed rejected.

(ii) If the Third Party purchases the ROFO Interests in accordance with the foregoing provisions, then the Transfer shall be in accordance with the provisions of Section 6(d).

(iii) If the ROFO Selling Member does not sell all the ROFO Interests to a Third Party in accordance with the provisions of Section 7(c), then any future Transfer of such ROFO Interests will again be subject to the provisions of this Agreement, including Section 6.

(d) ROFO Closing.

If the ROFO was duly and timely accepted, then the ROFO Buying Member shall purchase, and the ROFO Selling Member shall sell, free and clear of all Liens, the ROFO Interests at a closing ("ROFO Closing") on the date that is ninety (90) days after the date that the ROFO Notice was delivered or such earlier date that is determined by the ROFO Buying Member that is at least two (2) business days after notice to such effect by the ROFO Buying Member to the ROFO Selling Member. The ROFO Closing shall be held at 10:00 a.m. (local time) at the principal offices of the Company or on such date or at such other location as agreed by the ROFO Selling Member and the ROFO Buying Member. At the ROFO Closing:

(i) the ROFO Selling Member shall deliver to the Company the certificate representing all of the ROFO Interests, accompanied with an assignment of all of the LLC Interests represented thereby executed in blank;

(ii) the ROFO Deposit and interest thereon shall be released from escrow and paid over to the ROFO Selling Member (the interest on the ROFO Deposit shall not be credited to the purchase price);

(iii) the ROFO Buying Member shall pay the ROFO Selling Member the balance of the ROFO Price that is payable by the ROFO Buying Member, giving full effect to the ROFO Deposit (excluding the interest on the ROFO Deposit) previously paid by the ROFO Buying Member; and

(iv) At or promptly after the ROFO Closing the Company shall:

(A) supplement Schedule I to reflect such Transfer; and

(B) deliver a notice to each Member that includes a copy of Schedule I, as so amended; and

(C) issue and deliver to the ROFO Buying Member a certificate representing the ROFO Interests acquired by the ROFO Buying Member.

(e) ROFO Closing Default.

If the ROFO Buying Member fails to tender the ROFO Price at the ROFO Closing or otherwise fails to purchase the ROFO Interests at the ROFO Closing in violation of this Agreement (and the ROFO Selling Member is not in default of this Section 7) and such breach or default continues for five (5) business days, then:

(i) The ROFO Selling Member shall be entitled to retain the ROFO Deposit and interest thereon paid by the ROFO Buying Member; and

(ii) The ROFO Buying Member shall no longer have a ROFO and the ROFO Selling Member shall be permitted to sell the ROFO Interests to any Third Party; and

(iii) If the ROFO Buying Member or any of its Affiliates is a Manager, then such Manager shall be removed by the Company and the other Member will be entitled to appoint a successor Manager of the Company and have the exclusive right to elect and appoint (or remove) the Managers; and

(iv) If the Third Party purchases the ROFO Interests in accordance with the foregoing provisions, then, the Transfer shall be in accordance with the provisions of Section 6(d).

8. Governance.

(a) Covenant by Each Member.

Each Member hereby agrees to promptly take, at any time and from time to time, all action necessary (including, without limitation, voting all of its LLC Interests in person or by proxy, calling special meetings of the Members and executing and delivering written consents in lieu thereof) to effect the provisions of this Section 8.

(b) Board of the Company.

(i) *Election and Appointment of the Board.* For so long as Clearday Member is a Member, and so long as the Superconductor Member is a Member:

(A) each such Member shall have the right to elect and appoint a manager of the Company (each such person, a "Manager") and there shall be two Managers of a board of Managers (the "Board") or such other number of Managers as approved by the Board.

(B) The Manager that is appointed or elected by a Member may be removed by such Member for any reason or no reason and such Member shall have the sole right to elect or appoint the successor to such Manager.

(C) Any such election or appointment or removal shall be effective when the applicable Member provides a notice to such effect to the other Member.

(ii) Power and Authority of the Board.

(A) Subject to Section 8(d), the Board shall have the exclusive power and authority to conduct the business and affairs of the Company. Approval of, or action taken by, the Board in accordance with the terms of this Agreement shall constitute approval of, or action by, the Company, or by the Company on behalf of any Subsidiary, and shall be binding on each of the Members. Notwithstanding any provision of this Agreement to the contrary, the Company shall not effect, and shall not permit any Subsidiary or provide a consent to any other Person to permit, any transaction between the Company (or any Subsidiary) and any Member or any Affiliate of any Member, unless the terms and conditions of such transaction are not less favorable to the Company (or such Subsidiary) as a substantially similar bona fide transaction with a Person that is not an Affiliate of any Member.

(B) The Managers shall meet at such times and at such locations as from time to time determined by the Managers. The procedures regarding such meetings, and the manner in which a Manager may attend in person, by teleconference or by proxy, shall be determined from time to time by the Managers, provided that a quorum for any meeting of the Managers shall be presence in person, by teleconference or by proxy by the Managers required to approve the action being considered at such meeting. Quorum shall be all of the Managers.

(C) Managers may act without a meeting if the action taken is approved in writing by the Managers that constitute the Managers required to approve such action. The effective date for any such approval shall be the date that written consent is delivered to the Company by the Managers.

(iii) *Reimbursement.* Each Manager shall be reimbursed from the Company for all out of pocket fees and expenses incurred on behalf of the Company's business promptly after providing receipts or other documentation sufficient under the Code to substantiate such fees and expenses, provided that that central overhead or salaries of directors, officers, managers, employees (or any Person acting in any similar capacity) of a Manager shall not be expenses of the Company or reimbursable.

(c) Member Meetings or Written Consents.

(i) The Members shall meet at such times and at such locations as from time to time determined by the Members. The procedures regarding such meetings, and the manner in which a Member may attend in person, by teleconference or by proxy, shall be determined from time to time by the Members, provided that a quorum for any meeting of the Members shall be presence in person, by teleconference or by proxy by the Members required to approve the action being considered at such meeting;

(ii) Members may act without a meeting if the action taken is approved in writing by the Members that constitute the Members required to approve such action. The effective date for any such approval shall be the date that written consent is delivered to the Company, the Superconductor Member and Clearday Member.

(d) Limitations on the Authority of the Board.

Notwithstanding the provisions of Section 8(b) to the contrary, subject to the provisions of Section 8(e), the Company and its Subsidiaries shall not, and the Board shall not authorize the Company or any of its Subsidiaries to, consummate any of the following transactions (each, a "Significant Transaction") without the prior affirmative consent ("Mutual Consent") of the Superconductor Member and Clearday Member:

(i) Sale of Assets or the Company:

(A) the merger or consolidation (or any similar transaction) of the Company or the Property Owner with any other Person;

(B) the sale, transfer, encumbrance, assignment, pledge, hypothecation or other disposition of the Property Owner Interests or any of them, or the sale, transfer, encumbrance, assignment, pledge, hypothecation or other disposition of all or substantially all of the Company's or the Property Owner's assets.

(C) the liquidation or dissolution of the Company or the Property Owner other than in accordance with Section 12;

(ii) Company Equity:

(A) approving any Capital Call Notice;

(B) issuing LLC Interests (or similar interests of the Property Owner) other than as permitted by this Agreement; or

(C) issuing any other equity interests (including phantom interests) in the Company or the Property Owner or granting any options, warrants, rights or other equity interests or debt obligations which are or may be converted or exchanged for any such securities or interests;

(D) converting or redeeming any LLC Interests or similar interests of the Property Owner;

(E) waiving any of the conditions for a Third Party to be admitted as a Member;

(iii) *Changing the Company's Business:* commencing any business or line of business other than the holding, managing and selling, pledging or otherwise realizing the economic value of the Property Owner Interests;

(iv) *Auditors:* retaining or changing the Company's independent public accounting firm;

(v) *Investments:* forming any Subsidiary of the Company or the Property Owner or investing in any Person;

(vi) *Amending the Charter Documents:* amending this Agreement or the Certificate of Formation of the Company or of the Property Owner;

(vii) *Asset Acquisitions*: acquiring any assets by the Company or any Subsidiary of the Company;

(viii) *Affiliate Transactions:* directly or indirectly entering into, amending or being a party to, any transaction or arrangement with a Member or any Affiliate of said Member except in the ordinary course of business and on arm's-length terms and conditions no less favorable to the Company or such Subsidiary than would be obtained in a comparable arm's-length transaction with an unrelated Third Party;

(ix) *Debt*. Incurrence of debt by the Company or the Property Owner, except as permitted by Section 8(e); and

(x) *Other Similar Actions:* authorizing any transaction similar in nature, substance or materiality to any of the foregoing provisions unless permitted under Section 8(e) below.

(e) Mutual Consent Not Required.

Notwithstanding the provisions of Section 8(d), the Mutual Consent shall not be required and any of the following actions may be taken with the sole approval of the Clearday Member:

(i) The sale or other disposition of the Property Owner Interests or the assets of Property Owner for a sales price that provides minimum unrestricted, cash net proceeds, that does not subject the holder of the Preferred LLC Interests to contractual indemnity or clawback, that is equal to or greater than the Preferred Liquidation Amount; provided, such action is proposed to the Board at least 10 days before the proposed action (even if the Superconductor Member does not approve or vote).

(ii) The ordinary course conduct of the business of Property Owner as an owner and developer of the property (the "Property") located at 8800 Village Drive, San Antonio, Texas.

(iii) The leasing of space at the Property;

(iv) The lease or use of the Property by the Clearday Member or any of its Affiliates for their respective businesses;

(v) The refinancing of any indebtedness of the property owned by Property Owner or the incurrence of purchase money financing or other financing of the business of Property Owner, whether or not secured by the pledge of the equity interests of Property Owner; provided, (a) the action is proposed in writing to the Board at least 10 days before taking the action (the "Review Period"); (b) no Affiliate of any member is the lender or receives any compensation or payment with respect to such refinancing or incurrence; (c) the Superconductor Member has received during the Review Period all such documentation regarding the refinancing or incurrence as it may reasonably request that is reasonably available or in the possession of the Company or its Affiliates, and (d) (i) prior to the date of the filng with the Securities and Exchange Commission of the Registration Statement on Form S-4 contemplated by Section 5.1(a) of the Merger Agreement (the "S-4 Filing"), the Superconductor Member has provided its written consent to such refinancing or incurrence, which consent shall not be unreasonably withheld; and (ii) on or after the date of the S-4 Filing, the Superconductor Member has not, within 10 days after the conclusion of the Review Period, reasonably determined in a written notification delivered to the Company (an "Impairment Determination"), based on its good faith accounting judgment of Generally Accepted Accounting Principles as consistently applied by it in the preparation of its financial statements ("GAAP") after discussion with the Clearday Member and as reasonably explained in the notification containing the Impairment Determination (which explanation shall include, as applicable, reference to appropriate GAAP standards, rules or principles, and supporting documentation, such as, worksheets illustrating the GAAP considerations) that the proposed refinancing or incurrence (taking into account any other debt or proposed debt of the Company and other factors relevant under GAAP and after giving effect to the transactions related to such refinancing or incurrence) either does or is reasonably likely to, result in a write-down, impairment, charge or other reduction to the $1.6 million of stockholder's equity that the Superconductor Member has booked in connection with the transactions contemplated by this Agreement (the process described in clauses (a) through (d) inclusive, an "Impairment Determination Process").

(vi) The incurrence of a loan by the Property Owner or the Company, and a related encumbrance on the assets of the Property Owner or the Company, by a commercial bank or other institutional lender that does not require any guaranty of obligations by any Preferred Member and in which the net proceeds for any such loan is used solely for the capital improvements of the building at 8800 Village Drive, San Antonio, Texas; provided, such lender is not an Affilate of the Clearday Member and the aggregate amount of such loan does not exceed $2,500,000; provided, (i) prior to the date

of the S-4 Filing, the Superconductor Member has provided its written consent to such refinancing or incurrence, which consent shall not be unreasonably withheld; and (ii) on or after the date of the S-4 Filing, no Impairment Determination with respect to such loan has been made after complying with the Impairment Determination Process.

(vii) The advance of cash to the Company or Property Owner for the payment of any obligations of such Person as a loan under Section 13; provided, that no interest or fees shall accrue or be payable on account of any such loan and only the amount of the cash advanced shall be repaid, and no such loan shall be repaid unless and until the Superconductor Member receives or has received the Preferred Liquidation Amount in full.

The Clearday Member agrees that in the event that the Merger Agreement is terminated in accordance with its terms, upon the written request of the Superconductor Member, the Clearday Member will use its commercially reasonable efforts to refinance or finance the Property and/or the interests in Property Owner to make distributions to the Preferred Member in an amount that is not less than the then Preferred Liquidation Amount.

9. [intentionally omitted]

10. Accounting Provisions.

(a) Fiscal and Taxable Year.

The fiscal and taxable year of the Company shall be the calendar year.

(b) Books and Accounts.

(i) Complete and accurate books and accounts shall be kept and maintained for the Company at the Company's principal place of business. Such books and accounts shall be kept for fiscal and tax purposes on the accrual basis in accordance of Generally Accepted Accounting Principles. A list of the names and addresses of the Members and their respective membership interest shall be maintained as part of the books and records for the Company. Each Member or such Member's duly authorized representative, at such Member's own expense and upon delivering advance written notice to the Company, shall at all reasonable time have access to, and may inspect and make copies of, such books and accounts and any other records of the Company.

(ii) All funds received by the Company shall be deposited in the name of the Company in the bank account or accounts of the Company, and withdrawals therefrom shall be made upon the signature of the individual or individuals designated from time to time by the Board. In the sole and absolute discretion of the Board, all deposits and other funds not needed in the operation of the Company's business may be deposited in interest-bearing bank accounts, in money market funds, or invested in treasury bills, certificates of deposit, U.S. government security-backed repurchase agreements or similar money market instruments, or funds investing in any of the foregoing or similar types of investments.

(c) Financial Reports.

The Board shall endeavor to cause to be prepared after the end of each taxable year of the Company and file, on or before their respective due dates (as the same may be extended), all federal and state income tax returns of the Company for such taxable year and shall promptly take all action as may be necessary to permit the Company's regular accountants to prepare and

timely file such returns. A copy of Schedule K 1 to the Company's income tax return shall be sent to each Member within thirty (30) days after the Board has all information necessary to properly prepare the Schedule K 1 reflecting the Member's distributive share of income, loss, credit and deductions for such taxable year. The Board shall cause to be sent to each Member (a) within forty-five (45) days after the end of each calendar quarter during the term of this Agreement, a balance sheet and profit and loss statement for the calendar quarter just ended (which financial statements need not be audited) and (b) within ninety (90) days after the end of each fiscal year a balance sheet, cash flow statement and profit and loss statement for the fiscal year just ended, compiled by the Approved Accountant, provided that if such compilation is not completed within such ninety (90) day period, then the Board shall cause to be delivered the regularly prepared unaudited fiscal year a balance sheet, cash flow statement and profit and loss statement for the fiscal year just ended and a copy of such complied financial statements within five (5) business days after receipt thereof. Such financial statements shall be prepared on the basis that the books and records are maintained in accordance with Section 10(b)(i). In addition, within thirty (30) days after the filing thereof, the Board shall cause the Company to send to each Member (a) a copy of each federal and, if applicable, state and local tax return of the Company for the fiscal year just ended; and (b) such other items as the Board may deem reasonably material to the operations of the Company.

(d) Tax Elections.

Any elections required or permitted to be made by the Company under the Internal Revenue Code of 1986, as amended (the "Code"), shall be made by the Board in such manner as the Board shall determine.

(e) Expenses.

To the extent practicable, all expenses of the Company shall be billed directly to, and be paid by, the Company. The Company shall not be obligated to pay or reimburse the Members for their expenses with respect to the negotiation, execution and delivery of this Agreement.

11. Distributions and Allocations.

(a) Distributions.

The net cash flow, i.e., cash received in excess of expenses and reasonable reserves (including all amounts paid or payable with respect to Capital Default Loans), of the Company shall be distributed to the Members at such times as from time to time determined by the Board (but in no event, less than quarterly) to the Members as provided in this Section 11(a):

(i) All distributions of Capital Event Proceeds shall be distributed as follows:

(A) First to the holders of the Preferred LLC Interests in an amount that is equal to the Net Unreturned Invested Capital of the Preferred LLC Interests (which distribution amounts are referred to as the "Preferred Liquidation Amount");

(B) Then, to the holders of the Common LLC Interests.

(ii) All distributions of proceeds that are not Capital Event Proceeds, shall be distributed to the Members in accordance with their respective Percentage Interersts.

(iii) After the distribution of the Preferred Liquidation Amount, the Preferred LLC Interests shall be redeemed.

(b) Withholding Taxes.

If the Company is required to withhold any portion of any distribution or allocation to a Member by applicable federal, state, local or foreign tax laws, the Company shall withhold such amounts and make such payments to such taxing authorities as are necessary to ensure compliance with such tax laws. If the Company is required to pay any tax to a federal, state, local or foreign government on the account of a Member's nationality, origin, tax status or similar factors, or as a result of the action or inaction of a Member, the Company shall pay such tax as required or necessary to ensure its compliance with applicable tax laws. Any funds withheld or paid by reason of this Section 11(b) shall nonetheless be deemed distributed or allocated (as the case may be) to the Member in question for all purposes under this Agreement. If the Company makes any payment to a taxing authority in respect of a Member hereunder that is not withheld from actual distributions to the Member, then the Company may, at its option: (i) require the Member to reimburse the Company for such withholding (along with interest at the Capital Loan Rate from the date of such withholding until reimbursed or subsequently withheld from distributions); and/or (ii) reduce any subsequent distributions to such Member by the amount of such unrecovered withholding (along with interest at the Capital Loan Rate from the date of such withholding until reimbursed or subsequently withheld from distributions); provided, however, that if the Company elects (ii), such reduction must be taken from the first distribution subsequent to the payment. The obligation of a Member to reimburse the Company for taxes that were required to be withheld shall continue after such Member sells or otherwise conveys its LLC Interest and after the withdrawal by such Member. Each Member agrees to furnish the Company with any representations and forms as shall reasonably be requested by the Board to assist it in determining the extent of, and in fulfilling, any withholding obligations of the Company.

(c) Allocations of Profits and Losses.

Subject to the provisions of Section 11(d), and after giving effect to the allocations under such Section, Profits and Losses of the Company shall be allocated as follows:

Except as otherwise provided in this Agreement, and after giving effect to Section 11(d), Profits or Losses for any Fiscal Year will be allocated among the Members such that the Capital Account of each Member, immediately after giving effect to such allocations, will equal (proportionately), as nearly as possible, (A) the amount of the Distributions that would be made to such Member during such Fiscal Year if (i) the Company were dissolved and terminated, (ii) its affairs were wound up and each asset were sold for its Gross Asset Value (without regard

to clause (d) of the definition of Gross Asset Value, and except that any asset which was the subject of a disposition in such Fiscal Year will be treated as if it were sold for cash equal to the sum of the amount received by the Company in any such disposition and the Fair Market Value of any other property received by the Company in such disposition), (iii) all liabilities of the Company were satisfied and (iv) the net assets of the Company were distributed to the Members in accordance with Section 12 and applicable law, minus (B) such Member's share of partnership minimum gain and partner nonrecourse debt minimum gain determined pursuant to Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), computed immediately prior to the hypothetical sale of assets. For avoidance of doubt, it is the parties' intent to have all income, gain, deduction and loss allocated to the Clearday Member. The Board will make such other assumptions as he deems necessary or appropriate in his good faith and reasonable judgment in order to effectuate the intended beneficial entitlements of the Members. It is the intent of the Members that the foregoing allocation will meet the requirements for "substantial economic effect" of Section 704 of the Code and the Regulations promulgated thereunder. The allocations set forth in this Article 6 shall be interpreted consistently with the foregoing intent and the allocations shall be amended, if necessary, in order to accomplish this purpose.

(d) Special Allocations.

(i) *Loss Limitation*. Losses shall not be allocated to a Member to the extent an allocation of such loss would cause or increase an Adjusted Capital Account Deficit of such Member beyond the amount that such Member is obligated to restore as of the end of any taxable year, taking into account the amounts and adjustments set forth in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4)-(6). Any Loss not allocated to a Member under this Section 11(d)(i) shall be reallocated to the other Member, provided that such reallocation does not cause or increase the Adjusted Capital Account Deficit of any other Member.

(ii) *Member Minimum Gain Chargeback*. Notwithstanding any other provision of this Section 11, if during any taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain, any Member with a share of that Member Nonrecourse Debt Minimum Gain (determined in accordance with Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of such taxable year must be allocated items of Company income and gain for the taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain (determined in accordance with Treasury Regulations Section 1.704-2(i)(4)); provided, however, that this Section 11(d)(ii) shall not apply to the extent the circumstances described in the third and fifth sentences of Treasury Regulations Section 1.704-2(i)(4) exist. The items of Company income and gain to be allocated pursuant to this Section 11(d)(ii) shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (j). This Section 11(d)(ii) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(iii) *Minimum Gain Chargeback.* Notwithstanding any other provision of this Section 11(d), if there is a net decrease in Minimum Gain for any taxable year, each Member shall, in the manner provided in Treasury Regulations Section 1.704-2(f), be allocated items of Company income and gain for such year (and, if necessary, for subsequent taxable years) in an amount equal to such Member's share of the net decrease in Minimum Gain, in accordance with Treasury Regulations Sections 1.704-2(f),(g) and (j); provided, however, that this Section 11(d)(iii) shall not apply to the extent the circumstances described in Treasury Regulations Sections 1.704-2(f)(2), 1.704-2(f)(3), 1.704-2(f)(4), or 1.704-2(f)(5) exist. The items of Company income and gain to be allocated pursuant to this Section 11(d)(iii) shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and (j). This Section 11(d)(iii) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(iv) *Qualified Income Offset.* If any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that create or increase an Adjusted Capital Account Deficit for such Member, items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulations Section 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account Deficit for such Member as quickly as possible; provided, however, that an allocation pursuant to this Section 11(d)(iv) shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 11(d)(iv) have been tentatively made as if this Section 11 were not in this Agreement.

(v) *Nonrecourse Deductions.* Nonrecourse Deductions for any taxable year or other period shall be specially allocated among the Members in accordance with their Percentage Interests.

(vi) *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions for any taxable year or other period shall be specially allocated in accordance with Treasury Regulations Section 1.704-2(i)(1).

(vii) Section 754 Adjustment. To the extent that any adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations. The Board shall cause the Company to make the election permitted under Code Section 754.

(e) Other Allocation Rules.

(i) *Accrual of Profits and Losses.* For purposes of determining Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, using any method that is permissible under Code Section 706. If an LLC Interest is sold or otherwise conveyed in accordance with this Agreement, then except as otherwise provided by Code Section 706, the Profits and Losses of the Company and any other items of the Company shall be allocated between the periods before and after such sale or conveyance by the closing of the books method. As of the date of such sale or conveyance, the transferee shall succeed to the Capital Account of the transferor Member with respect to the Percentage Interest so sold or conveyed. This Section 11(e)(i) shall apply for purposes of computing a Member's Capital Account and for federal income tax purposes.

(ii) *Excess Nonrecourse Liability.* Each "excess nonrecourse liability" of the Company within the meaning of Treasury Regulation Section 1.752-3(a)(3) shall be allocated among the Members in accordance with the manner in which the Nonrecourse Deductions attributable to such liability will be allocated.

(iii) *514(c)(9)(E) Allocation.* Notwithstanding anything to the contrary contained herein, if a "qualified organization" within the meaning of Code Section 514(c)(9)(c) owns a direct or indirect interest in the Company and a Member so requests, allocations under this Agreement shall be made only to the extent that, and shall be adjusted to the extent necessary to ensure that the Company's allocations satisfy the requirements of Code Section 514(c)(9)(E), the Treasury Regulations promulgated thereunder and any administrative guidelines or pronouncements thereunder, including so that all allocations have "substantial economic effect" for the purposes of Code Section 514(c)(9)(E)(i)(II).

(f) Tax Allocations.

Unless otherwise agreed by the Members, the following elections will be made by the Company:

(i) In accordance with Code Section 704(c), the traditional method as set forth in Treasury Regulations Section 1.704-3(b), shall, solely for tax purposes, direct the allocation of income, gain, loss, and deduction with respect to any Company property among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

(ii) Except as provided herein, for federal income tax purposes, under the Code and Treasury Regulations, each Company item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to this Section 11. Any elections or other decisions relating to such allocations shall be made with the unanimous consent of the Members (or, to the extent provided herein, the Board) in any manner that reasonably reflects the purpose and intention of this Agreement.

(iii) The parties intend that the foregoing tax allocation provisions of this Section 11 shall produce final Capital Account balances of the Members that will match the liquidating distributions (after unpaid loans and interest thereon, including those owed to Members, have been paid) required to be made to the Members in accordance with Section 12. To the extent that the allocation provisions of this Section 11 would fail to produce such final Capital Account balances the Managing Member shall specifically allocate items of gross income and deduction of the Company for the year of liquidation and, if necessary, prior open years in such amounts as necessary to cause the Members final Capital Account balance to equal the amounts of the distributions made or to be made pursuant to Section 12.

(g) Tax Matters.

(i) The Members intend that the Company be treated as a partnership for Federal income tax purposes.

(ii) The fiscal and taxable year of the Company shall be the calendar year, unless the Board in its discretion, designates a different year. The Board shall provide a notice to each Member of any such designation.

(iii) The Manager that has been appointed by the Clearday Member is designated as the "partnership representative" within the meaning of Section 6223(a) of the Code (the "Partnership Representative") and shall be authorized to take any actions necessary under Treasury Regulations or other guidance to cause such person to be designated as such. The Company and each Member agree that they shall be bound by the actions taken by the Partnership Representative, as described in Section 6223(b) of the Code. The Partnership Representative shall have the authority to make elections set forth in the Revised Partnership Audit Rules, including but not limited to the election set forth in Section 6226(a) of the Code and each of the Members is required under this Agreement to furnish the Company and the Partnership Representative with any information necessary, to give effect to such election; and (iv) any imputed underpayment imposed on the Company, as applicable, pursuant to Section 6232 of the Code (and any related interest, penalties or other additions to tax) that the Company reasonably determines is attributable to one or more Members shall be promptly paid by such Member to the Company (pro rata in proportion to their respective shares of such underpayment) within fifteen (15) days following the Company's request for payment (and any failure to pay such amount shall result in a subsequent reduction in distributions otherwise payable to such Member). For the purposes of this Agreement, the term "Revised Partnership Audit Rules" shall mean the provisions regarding partnership audit procedures under Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto, treasury regulations promulgated thereunder, published administrative interpretations thereof, any guidance issued thereunder and any successor provisions) or any similar procedures established by a state, local, or non-U.S. taxing authority.

12. Liquidation and Termination of the Company.

(a) Mandatory Liquidation and Termination.

Upon the earlier to occur of:

(i) a merger between the Company and any other Person in which the Company is not the surviving entity;

(ii) the sale of all or substantially all of the assets of the Company or Property Owner, in each case, in any one transaction or series of related transactions;

(iii) Mutual Consent to dissolve the Company; or

(iv) any act requiring the dissolution of the Company under the Act,

the Company shall be terminated and liquidated in accordance with this Section 12 and the Act.

(b) General.

Upon the termination of the Company, the Company shall be liquidated in accordance with this Section 12 and the Act. The liquidation shall be conducted and supervised by the Board, or by an agent of the Company designated and approved by Mutual Consent (the Board or such agent being referred to in this Agreement as the "Liquidating Agent"). The Liquidating Agent shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the liquidation and termination of the Company that the Members would have with respect to the assets and liabilities of the Company during the term of this Agreement if acting by Mutual Consent. The Liquidating Agent shall have the right from time to time, by revocable powers of attorney, to delegate to one or more persons any or all of such rights and powers and such authority and power to execute and deliver documents, and, in connection therewith, to fix the reasonable compensation of each such person, which compensation shall be charged as an expense of liquidation. The Liquidating Agent is also expressly authorized to sell the Company's assets and/or to distribute the Company's property to the Members or other third parties subject to liens and the terms and provisions of this Agreement.

(c) Statements on Termination.

Each Member shall be furnished with a statement prepared by the Company's regular accountants setting forth the assets and liabilities of the Company as of the date of complete liquidation, and each Member's Percentage Interest as of such date. Upon compliance with the distribution plan set forth in this Agreement, the Members shall cease to be such, and the Liquidating Agent shall execute, acknowledge and cause to be filed where appropriate under law a Certificate of Dissolution of the Company.

(d) Priority on Liquidation.

The Liquidating Agent shall, to the extent feasible, liquidate and sell the tangible assets and the intangible assets of the Company as promptly as shall be practicable. To the extent the proceeds are sufficient therefor, in the Liquidating Agent's opinion, the proceeds of such liquidation shall be applied and distributed in the following order of priority (the "Liquidation Distribution"):

(i) To pay the costs and expenses of the liquidation and termination;

(ii) To pay the matured or fixed debts and liabilities of the Company;

(iii) To establish any reasonable reserve that the Liquidating Agent may deem necessary for any contingent, unmatured or unforeseen liability of the Company;

(iv) To the Members in accordance with the provisions of Section 11(a)(i).

(e) Distribution of Nonliquid Assets.

If the Liquidating Agent shall reasonably determine that it is not practicable to liquidate all of the assets of the Company, then the Liquidating Agent shall cause the fair market value of the assets not so liquidated to be determined by appraisal by an independent appraiser. Such assets, as so appraised, shall be retained or distributed by the Liquidating Agent as follows:

(i) The Liquidating Agent shall retain assets having a fair market value equal to the amount, if any, by which the net proceeds of liquidated assets are insufficient to satisfy the debts and liabilities of the Company, to pay the costs and expenses of the dissolution and liquidation, and to establish reserves, all subject to the provisions of this Agreement. The foregoing shall not be construed, however, to prohibit the Liquidating Agent from distributing, pursuant to this Agreement, property subject to Liens at the value of the Company's equity therein.

(ii) The remaining assets (including, without limitation, receivables, if any) shall be distributed to the Members by way of undivided interests therein in such proportions as shall be equal to the respective amounts to which each Member is entitled pursuant to this Agreement. If, in the judgment of the Liquidating Agent, it shall not be practicable to distribute to each Member an undivided aliquot share of each asset, the Liquidating Agent may allocate and distribute specific assets to one or more Members as tenants in-common as the Liquidating Agent shall determine to be fair and equitable, taking into consideration, inter alia, the basis for tax purposes of each asset distributed. Notwithstanding any provision contained in this Agreement to the contrary, if the Liquidating Agent shall for any reason be unable to liquidate and/or sell the Company's intangible assets in the course of any liquidation, then the parties hereto hereby instruct the Liquidating Agent to, and the Liquidating Agent shall, subject to the terms and provisions of this Section 12, distribute such intangible assets to the Members as co-owners with an undivided interest in the whole and unless otherwise agreed to by the parties hereto to the contrary, each Member to whom an intangible asset shall have been distributed shall have the full right to exploit the intellectual property rights contained therein without being obligated to account or pay to the other Member or Members for any royalties or other revenues received therefrom.

(iii) Nothing contained in this Agreement is intended to cause any in-kind distributions to be treated as sales for value.

(f) Orderly Liquidation.

A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to creditors so as to minimize the losses normally attendant upon a liquidation.

13. Loans and Advances.

If any Member or any of their respective Affiliates shall loan or advance any funds to the Company, such loan or advance shall not be deemed a Capital Contribution and shall not in any respect increase such Member's Percentage Interest except as otherwise provided upon the exercise of a Conversion Right under Section 4(d)(ii). Such loan or advance shall constitute an obligation and liability of the Company. Unless otherwise agreed in writing between the Members, the Board and the Company, the Members, the managers and any of their respective Affiliates shall not have any personal obligation or liability for the repayment of such loans and the same shall be collectible only from Company assets. Any reference in this Agreement to the payment of debts, obligations or liabilities of the Company shall be deemed to include any such loans from a Member and any of their Affiliates, to the extent that law and agreements to which the Company is a party or is subject permit, and to the extent that the terms of such loans may require, such loans from a Member or any of their Affiliates, shall be paid ahead of other general debts, obligations and liabilities of the Company.

14. Exculpation and Indemnification of Managers, Members and Affiliates.

(a) Exculpation.

Notwithstanding any other provisions of this Agreement, whether express or implied, or obligation or duty at law or in equity, no Member or manager, nor any officer or employee of the Company or of any Member or manager shall be liable to the Company or any other Person for any act or omission taken or omitted by any such Person or any Affiliate of any such Person which is within the scope of authority granted to any such Person or any Affiliate of any such Person by this Agreement, provided that such act or omission does not constitute a breach of any covenant or agreement of this Agreement (in which case, the Member shall be liable), fraud, willful misconduct or gross negligence. In furtherance of the foregoing, it is acknowledged and agreed that no Member nor any Manager shall have a fiduciary duty to the Company or any Member to the fullest extent permitted under Section 18-1101(c) of the Act.

(b) Indemnification.

(i) The Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action initiated by or in the right of the Company in which action the Company ultimately prevails) by reason of the fact that such party is or was a Member, manager, officer, employee, or agent of the Company, or is or was serving at the request of the Company as a manager, director, officer, employee, trustee or agent of another limited liability company or corporation, partnership, joint venture, trust or other enterprise, from and against

expenses (including attorneys' and accountants' fees and disbursements), judgments, fines and amounts paid in settlement, actually and reasonably incurred (collectively, "Indemnification Losses") by such party in connection with such action, suit or proceeding, provided that no Person shall be entitled to indemnification under this Agreement to the extent that the amount of any Indemnification Losses arises from fraud, willful misconduct or gross negligence; provided, further, that any Indemnification Losses suffered by the Clearday Member shall be subordinated in right of payment to the Preferred Liquidation Amount to the extent that such obligations do not arise from the ordinary course of business of the assets of the Company, including the renovation or capital improvement of the property owned by the Company or are owed to an Affiliate of the Clearday Member.

(ii) The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the acts or omissions by the Person seeking indemnification actions constitute fraud, willful misconduct or gross negligence.

(iii) Any indemnification under this Agreement (unless ordered by a court) shall be made by the Company only as authorized in the specific case with the consent of the Members (which consent shall not be unreasonably withheld, delayed or conditioned) that indemnification of the Member, manager, officer, employee or agent is proper in the circumstances because such party has met the applicable standard of conduct set forth in this Agreement.

(iv) Expenses (including actual attorneys' and accountants fees and disbursements including any retainer fees or deposits) incurred by any Member, manager, officer, employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding shall, with the prior consent of the Members (which consent shall not be unreasonably withheld, delayed or conditioned), be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined that such party is not entitled to be indemnified by the Company as authorized in this Section 14(b) ; provided, further, that any such expenses incurred by the Clearday Member shall be subordinated in right of payment to the Preferred Liquidation Amount to the extent that such obligations do not arise from the ordinary course of business of the assets of the Company, including the renovation or capital improvement of the property owned by the Company or are owed to an Affiliate of the Clearday Member..

(v) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 14(b) shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, agreement, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

(vi) The Company may purchase and maintain insurance on behalf of any person who is or was a Member, manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee, trustee or agent of another limited liability company corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such party and incurred by such party in any such capacity, or arising out of such party's status as such.

(vii) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 14(b) shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Member, manager, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators or successors or assigns of each such Person.

15. Confidentiality; Non-Exclusivity.

(a) Confidentiality.

Each Member shall retain in strict confidence, and shall not use for any purpose whatsoever, or divulge, disseminate or disclose to any Third Party (other than in furtherance of the business purposes of the Company or as may be required by law) any proprietary or confidential information relating to the business of the Company, including, without limitation, information regarding the conduct of the memory care business conducted by Property Owner, financial information, real property space availability, lease terms, development plans, distribution or franchising methods and channels, pricing information, business methods, management information systems and software, customer lists, supplier lists, leads, solicitations and contacts, know-how, show-how, inventions, improvements, specifications, trade secrets, agreements, research and development, business plans and marketing plans of Property Owner or the Company, whether or not any of the foregoing are copyrightable or patentable provided, that (i) a Member may in connection with any Approved Transfer provide financial and other information with respect to the Company; (ii) that each Member may divulge, disseminate or disclose any such proprietary and confidential information to its agents, consultants, professional advisors and co-investors for the purposes of managing its investment in the Company; and (iii) each Member may divulge, disseminate or disclose any such proprietary and confidential information to any of its Affiliates or otherwise to the extent necessary to comply with applicable legal requirements.

(b) Press Releases.

Except as required by law, no press release shall be issued about the Company or its Subsidiaries or any Member or any of their respective Affiliates without the prior Mutual Consent. The provisions of this Section 15(b) shall survive the termination of the term of this Agreement for a period of three (3) years.

(c) Non-Exclusivity.

Each Member and any of its Affiliates may engage in, acquire and possess, without accountability to the Company or the other Members, any calling, business, profession, investment or interest independently or with others, including, but not limited to, the acquisition, ownership, financing, leasing, operation, management or development of any interests in any business or asset even if such act is directly competitive with the business of, or any of the assets owned by, the Company or any Subsidiary of the Company.

(d) Financial Reporting.

The Company shall cooperate with the Superconductor Member in providing such financial information as it may reasonably require to prepare its own consolidated financial statements for public reporting.

(e) Inspection.

Each Member shall have the absolute right, during business hours, to inspect each and every asset, document, liability, record or other information of the Company and its subsidiaries. Each Members shall have the right to promptly receive such financial information and reports as it may reasonably request, including annual, quarterly and monthly income statements, balance sheets and cash flow statements on a consolidated and subsidiary basis (according to GAAP is reasonably practicable), all certified as to accuracy by the chief financial officer of the Company and provided not later then 90 days after each annual period, 45 days after each quarterly period and promptly after each monthly period.

16. Members' Representations and Warranties.

Each of the Members on behalf of itself, severally, represents and warrants as of the date hereof to the other Members that:

(i) it is duly formed and has all necessary power and authority to execute and deliver, and perform its obligations under, this Agreement as a Member; this Agreement has been duly authorized, executed and delivered by such Member and the constituent members of such Member; this Agreement constitutes the valid and legal binding obligation of each Member and is enforceable against each Member in accordance with its terms, subject, as to enforceability, to bankruptcy, insolvency, moratorium and other similar laws of general applicability affecting creditors rights and general equity principles; and no consent or approval from any governmental authority or any third party is required in connection with the execution and delivery of this Agreement;

(ii) neither the execution of this Agreement by a Member nor the performance by each Member of its obligations hereunder will

(A) conflict with or result in a breach of, the terms, conditions or provisions of, or constitute a default by any Member under, any agreement by which a Member is bound or

(B) violate any restriction, requirement, covenant or condition contained in any agreement to which a Member (to the best of such Member's knowledge) is bound; and

(iii) it has not relied on any representations, warranties or promises (written or oral) with respect to the Company or the Property except as expressly set forth herein.

17. Amendment and Modification.

This Agreement may not be amended, modified or supplemented except in a writing, duly authorized, executed and delivered by each Member.

18. Assignment.

This Agreement and all of the provisions of this Agreement shall be binding upon and shall inure to the benefit of the Members and their respective heirs, assigns, executors, administrators or successors, but neither this Agreement nor any of the rights, benefits, interests or obligations under this Agreement shall be assigned or delegated by any of the Members without the prior written consent of the other Member, in each case, except as otherwise expressly permitted under this Agreement.

19. Further Assurances.

Each party hereto by the execution and delivery of this Agreement hereby consents to the formation of the Company and the transfer and assignment of the Property Owner Interests. Each Member hereby agrees that he or it shall promptly do and perform or cause to be done and performed all such further acts and things and shall promptly execute and deliver all such other agreements, certificates, instruments and documents as any other party hereto may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement.

20. Governing Law.

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware governing agreements made wholly within the State of Delaware.

21. Notices.

(a) Initial Addresses.

All notices (including any consent required of any Member and the Foreclosure Notice) given or permitted to be provided pursuant to this Agreement shall be in writing and shall be made by hand delivery, telecopier, or overnight air courier guaranteeing next business day delivery:

(i) if to the Company,
to each of
Clearday Member and
the Superconductor Member
as provided below

(ii) if to Clearday Member, to such Person
c/o Clearday, Inc.
8800 Village Drive, 2nd Floor
San Antonio, Texas 78217
Attention: James Walesa
Tel: (210-451-0939

(iii) if to the Superconductor Member, to such Person
c/o Superconductor Technologies Inc.
15511 W State Hwy 71, Suite 110-105
Austin, TX 78738
Attention: Jeffrey A. Quiram
Tel: (512) 650-7775
with a copy to:

Proskauer Rose LLP
2029 Century Park East,
Suite 2400
Los Angeles, CA 90067-3010
Attention: Ben D. Orlanski, Esq.
Tel.: (310) 557-2900

(b) Notices to Other Members.

If to any other Member, the address designated by such other Member to the Company in writing, each such designation to be effective only upon receipt and only to the extent provided in the modification to Schedule I.

(c) Change of Address.

Any party may change the address that notices should be delivered to it by delivering a notice with the corrected information to the Company and each other Member, such corrected information to be effective only upon delivery of such notice.

(d) Deemed Delivery.

Except as otherwise expressly provided in this Agreement, each such notice shall be deemed given, delivered and received at the time delivered by hand, if personally delivered; when receipt acknowledged, if telecopied; and the next business day after timely delivery to the courier, if sent by overnight air courier guaranteeing next business day delivery.

22. Consent to Jurisdiction.

All actions and proceedings arising out of, or relating to, this Agreement shall be heard and determined exclusively in any state or federal court sitting in New York County, New York. The undersigned, by execution and delivery of this Agreement, expressly and irrevocably:

(i) consent and submit to the exclusive personal jurisdiction of any of such courts in any such action or proceeding; (ii) consent to the service of any complaint, summons, notice or other process relating to any such action or proceeding by delivery thereof to such party or the above specified attorney by hand delivered or addressed as set forth in Section 21; and (iii) waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens or any similar basis.

23. Waiver of Jury Trial.

EACH MEMBER, THE COMPANY AND THE MANAGER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH MEMBER, THE COMPANY AND THE MANAGER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER

24. Entire Agreement; Non-Waiver.

This Agreement supersedes and terminates all prior agreements between any of the parties hereto with respect to the subject matter contained in this Agreement, and this Agreement embodies the entire understanding between the parties relating to such subject matter, and any and all prior correspondence, conversations and memoranda are merged in this Agreement and shall be without effect hereon. No promises, covenants or representations of any kind, other than those expressly stated in this Agreement, have been made to induce any party to enter into this Agreement. No delay on the part of any party in exercising any right under this Agreement shall operate as a waiver thereof, nor shall any waiver, express or implied, by any party of any right under this Agreement or of any failure to perform or breach of this Agreement by any other party constitute or be deemed a waiver of any other right under this Agreement or of any other failure to perform or breach of this Agreement by the same or any other Member, whether of a similar or dissimilar nature thereof.

25. Specific Performance and Injunctive Relief.

The parties recognize and acknowledge that their membership interests are closely held and that, accordingly, in the event of a breach or default by one or more of the parties hereto of the terms and conditions of this Agreement, the damages to the remaining parties to this Agreement, or any one or more of them, may be impossible to ascertain and such parties will not have an adequate remedy at law. In the event of any such breach or default in the performance of the terms and provisions of this Agreement, any party or parties thereof aggrieved thereby shall be entitled to institute and prosecute proceedings in any court of competent jurisdiction, either at law or in equity, to enforce the specific performance of the terms and conditions of this Agreement, to

enjoin further violations of the provisions of this Agreement and/or to obtain damages. Except as otherwise expressly provided in this Agreement, such remedies shall however be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or at law. Each Member hereby waives any requirement for security or the posting of any bond or other surety and proof of damages in connection with any temporary or permanent award of injunctive, mandatory or other equitable relief and further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

26. Attorneys' Fees.

In any action or proceeding brought to enforce any provision of this Agreement, or where any provision of this Agreement is validly asserted as a defense, the successful party shall be entitled to recover its actual attorneys' fees and all disbursements in addition to any other available remedy.

27. Severability.

If any provision of this Agreement or the application thereof to any party or circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the other parties or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by applicable law.

28. Cash Payments by and to Members.

All payments of cash by any Member to any other Member provided in this Agreement shall be by wire transfer of immediately available funds pursuant to the wire transfer instructions provided by the Member receiving such payment to the paying Member or, if such wire transfer instructions are not received at least two (2) business days prior to the date of such payment, then such payment shall be by check payable to the Member receiving such payment delivered to such Member on the applicable payment date at the offices of the Company.

29. Miscellaneous.

(i) Notwithstanding any provision of this Agreement to the contrary, a Transferee of an Approved Transfer shall take the LLC Interests in such sale or transaction subject to the terms and provisions of this Agreement.

(ii) Section headings are for convenience of reference only and shall not be used to construe the meaning of any provision of this Agreement.

(iii) This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall together constitute one agreement.

(iv) Any word or term used in this Agreement in any form shall be masculine, feminine, neuter, singular or plural, as proper reading requires. The words “herein”, “hereof”, “hereby” or “hereto” shall refer to this Agreement unless otherwise expressly provided. Any reference in this Agreement to a Section or any exhibit or schedule shall be a reference to a Section of, and an exhibit or schedule to, this Agreement unless the context otherwise requires. Any reference in this Agreement to a “business day” shall mean a day in which the New York branch of the Federal Reserve Bank is open for business during its normal hours of operation.

[*The next page is the Signature Page*]

IN WITNESS WHEREOF, this Agreement has been signed by each of the parties hereto as of the date first written above.

The Company

NAPLES JV, LLC

By: /s/ James Walesa
Name: James Walesa
Title: Manager

The Members

SUPERCONDUCTOR TECHNOLOGIES INC.

By: /s/ Jeffrey A. Quiram
Name: Jeffrey A. Quiram
Title: Chief Executive Officer

CLEARDAY NAPLES, LLC

By: /s/ James Walesa
Name: James Walesa
Title: Manager

SCHEDULE I
to the Amended and Restated Limited Liability Company Agreement
of

Naples JV, LLC

Date Last Revised: July 6, 2020

Name of Member	Percentage Interest
Superconductor Technologies Inc.	50.00%
Clearday Naples, LLC	50.00%
TOTAL	100.00%

EXHIBIT A

Form of Certificate Representing LLC Interests

(attached hereto)

LLC INTEREST CERTIFICATE
Naples JV, LLC
(A DELAWARE LIMITED LIABILITY COMPANY)

THIS CERTIFIES THAT

_____

is the owner of [Common] [Preferred] limited liability company interests in the above named limited liability company that **as of the date of this certificate** represent

_____ % of the aggregate limited liability company interests in said company and 100% of such class of limited liability company interests, transferable only on the books of said company by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Company has caused the Certificate to be signed by a duly authorized manager of the Company as of this _____ day of _____, ____.

Naples JV, LLC

By: _____
Name:
Title: Manager

[THIS CERTIFICATE CONTAINS A LEGEND OR LEGENDS ON THE REVERSE SIDE]

THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY JURISDICTION. NO SUCH LIMITED LIABILITY COMPANY INTEREST MAY BE SOLD OR OFFERED FOR SALE UNLESS A REGISTRATION STATEMENT UNDER ALL APPLICABLE SECURITIES LAWS WITH RESPECT TO THE LIMITED LIABILITY COMPANY INTEREST IS THEN IN EFFECT OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF THOSE LAWS IS THEN APPLICABLE TO THE LIMITED LIABILITY COMPANY INTERESTS OR SUCH SALE. THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE LIMITED LIABILITY COMPANY AGREEMENT OF THE COMPANY, AS AMENDED, INCLUDING PROVISIONS RESTRICTING THE TRANSFER OF SUCH LIMITED LIABILITY COMPANY INTERESTS. NO TRANSFEREE OR ASSIGNEE OF ANY OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THE CERTIFICATE MAY BE ADMITTED AS A MEMBER IN THE ABOVE NAMED COMPANY UNLESS THE CONDITIONS OF THE ABOVE REFERENCED LIMITED LIABILITY COMPANY AGREEMENT, AS AMENDED, ARE SATISFIED.

THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE ARE A SECURITY GOVERNED BY ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE.

Schedule II
To
Amended and Restated Limited Liability Company Agreement of
Naples JV, LLC
Index to Certain Defined Terms

Exhibit 10.3

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of July 6, 2020, between Superconductor Technologies Inc., a Delaware corporation (the "Company"), and Clearday Naples LLC (the "Purchaser").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and the Purchaser (the "Purchase Agreement").

For good and valuation consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Purchaser hereby agree as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement.

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

"Advice" shall have the meaning set forth in Section 6(d).

"Common Stock" means, the common stock, par value $0.001 per share, of the Company and all securities to which such stock is converted or exchanged in any merger or consolidation of the Company.

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 75th calendar day following the Initiation Date (or, in the event of a "full review" by the Commission, the 100th calendar day following the Initiation Date) and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 75th calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a "full review" by the Commission, the 100th calendar day following the date such additional Registration Statement is required to be filed hereunder); provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

"Event Date" shall have the meaning set forth in Section 2(d).

"Filing Date" means, with respect to the Initial Registration Statement required hereunder, the 40th calendar day following the Initiation Date and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Initial Registration Statement" means the initial Registration Statement filed pursuant to this Agreement.

"Initiation Date" means the date that the Agreement and Plan of Merger dated as of February 26, 2020, by and among the Company, AIU Special Merger Company, Inc., a Delaware corporation and wholly-owned subsidiary of the Company, and Allied Integral United, Inc., a Delaware corporation that is the parent entity of Clearday, as such agreement is amended, is terminated in accordance with its terms.

"Losses" shall have the meaning set forth in Section 5(a).

"Plan of Distribution" shall have the meaning set forth in Section 2(a).

"Prospectus" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means, as of any date of determination,

(i) all shares of Common Stock issued to or issuable to the Purchaser pursuant to the Purchase Agreement; and

(ii) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (x) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective

Registration Statement, (y) such Registrable Securities have been previously sold in accordance with Rule 144, or (z) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company, as reasonably determined by the Company, upon the advice of counsel to the Company.

"Registration Statement" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"Rule 415" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

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

"Selling Stockholder Questionnaire" shall have the meaning set forth in Section 3(a).

"SEC Guidance" means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

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

"Trading Days" shall mean a business day on which the Nasdaq Capital Market open for ordinary securities transactions.

2. Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e), provided, however, that the Holders

acknowledge that the initial Registration Statement filed pursuant to this Agreement will be on Form S-1) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the "Plan of Distribution" attached hereto as Annex A and substantially the "Selling Stockholder" section attached hereto as Annex B; provided, however, that no Holder shall be required to be named as an "underwriter" without such Holder's express prior written consent. Subject to the terms of this Agreement, the Company shall use its commercially reasonable best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its commercially reasonable best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the "Effectiveness Period"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); with respect to filing on Form S-3 or other appropriate form, and subject to the provisions of Section 2(d) with respect to the payment of liquidated damages; provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be subject to the following adjustments:

(i) First, and prior to the inclusion of any Registrable Securities, the Company may include in such Registration Statement other Registrable Securities under which the Company is required to provide registration rights under an agreement that is prior to the date of this Agreement;

(ii) Second, the Company shall reduce or eliminate any securities to be included other than Registrable Securities other than pursuant to the foregoing clause (i) to the extent such inclusion would reduce the number of Registrable Securities that could otherwise be included; and

(iii) Third, the Company shall reduce Registrable Securities represented by Clearday Conversion Shares (applied, in the case that some Clearday Conversion Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Clearday Conversion Shares held by such Holders).

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any twelve (12) month period (any such failure or breach being referred to as an "Event", and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (v) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as "Event Date"), then, in lieu of any other rights, remedies or claims the Holders may have hereunder or under applicable law with respect to any Events (other than injunctive relief), on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash,

as liquidated damages and not as a penalty, equal to (regardless of how many Events occur at the same time) one percent of the aggregate Subscription Amount (as defined in the Purchase Agreement) attributable to those Registrable Securities that remain unsold as of the Event Date; provided, no liquidated damages shall be payable with respect to any securities that have ceased to be Registrable Securities. If the Company fails to pay any liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any Underwriter without the prior written consent of such Holder.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex C (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4^{th}) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a “review” of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other

documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its commercially reasonable best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; provided, that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its commercially reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its commercially reasonable best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4. Registration Expenses.

All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance

of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(d). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(h).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified

Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties'

relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. Subject to the express limitations herein, in the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations. Neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities.

(c) [RESERVED]

(d) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its commercially reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(e) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to each Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered; provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 6(e) that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement that is available for resales or other dispositions by such Holder.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 67% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(f). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(g) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Purchase Agreement.

(i) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(j) Execution and 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 the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or 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.

(k) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(l) Cumulative Remedies. Except as expressly provided herein, the remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(m) 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.

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

(o) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

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(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

The Company:

SUPERCONDUCTOR TECHNOLOGIES INC.

By: /s/ Jeffrey A. Quiram
Name: Jeffrey A. Quiram
Title: Chief Executive Officer

The Holder:

Allied Integral United, Inc.

By: /s/ James Walesa
Name: James Walesa
Title: CEO

Annex A

Plan of Distribution

Each Selling Stockholder (the "Selling Stockholders") of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal securities market on which the shares of Common Stock of the Company are traded ("Trading Market") or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

In connection with the sale of the securities or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the Common Stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the Common Stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

Annex B

SELLING SHAREHOLDERS

[These provisions may adjusted as reasonably requested by the Holder to reflect the specific facts of the offering, substantially consistent with this Agreement]

The Common Stock being offered by the selling shareholders are those previously issued to the selling shareholders, and those issuable to the selling shareholders, upon conversion upon shares of our preferred stock. For additional information regarding the issuances of those shares of Common Stock, see “Private Placement of Stock” above. We are registering the shares of Common Stock in order to permit the selling shareholders to offer the shares for resale from time to time. Except for the ownership of the shares of Common Stock, the selling shareholders have not had any material relationship with us within the past three years [other than such selling stockholders were party to that certain Agreement and Plan of Merger dated as of February 26, 2020, by and among the Company, AIU Special Merger Company, Inc., a Delaware corporation and wholly-owned subsidiary of the Company, and Allied Integral United, Inc., a Delaware corporation that is the parent entity of Clearday, as such agreement is amended as reported by us on Form 8-K filed on March 3, 2020 [To add, as reasonably necessary other disclosures or filings on Form 8-K with respect to the Merger Agreement, as applicable].

The table below lists the selling shareholders and other information regarding the beneficial ownership of the shares of Common Stock by each of the selling shareholders. The second column lists the number of shares of Common Stock beneficially owned by each selling shareholder, based on its ownership of the shares of Common Stock of the Company, as of_____ held by the selling shareholders on that date.

The third column lists the shares of Common Stock being offered by this prospectus by the selling shareholders.

In accordance with the terms of a registration rights agreement with the selling shareholders, this prospectus generally covers the resale of the sum of the number of shares of Common Stock issued to the selling shareholders in the [private placement], each as of the trading day immediately preceding the applicable date of determination and all subject to adjustment as provided in the registration right agreement. The fourth column assumes the sale of all of the shares offered by the selling shareholders pursuant to this prospectus.

The selling shareholders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

Name of Selling Shareholder	Number of shares of Common Stock Owned Prior to Offering	Maximum Number of shares of Common Stock to be Sold Pursuant to this Prospectus	Number of shares of Common Stock Owned After Offering

Annex C

SUPERCONDUCTOR TECHNOLOGIES INC.

Selling Stockholder Notice and Questionnaire

The undersigned beneficial owner of Common Stock (the "Registrable Securities") of Superconductor Technologies Inc., a Delaware corporation (the "Company"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Stockholder") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

QUESTIONNAIRE

1. Name.

(a) Full Legal Name of Selling Stockholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

_____

2. Address for Notices to Selling Stockholder:

_____

_____

_____

Telephone: _____

Fax: _____

Contact Person: _____

3. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If “no” to Section 3(b), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

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(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If “no” to Section 3(d), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

_____

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5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date:

Beneficial Owner:

By: _____

Name:

Title:

PLEASE FAX A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:

Schedule 6(i)

List of Inconsistent Agreements

None [or list here]

SUPERCONDUCTOR TECHNOLOGIES ENTERS SECURITIES PURCHASE AGREEMENT WITH SUBSIDIARY OF CLEARDAY

AUSTIN, Texas – July 6, 2020 — Superconductor Technologies Inc. (STI) (Nasdaq: SCON) and a wholly-owned subsidiary of Allied Integral United, Inc. entered into a Securities Purchase Agreement on June 30, 2020, which was consummated on July 6, 2020, pursuant to which STI issued four million (4,000,000) shares of STI Common Stock (without any warrants) in exchange for a preferred equity interest in real-estate (described below) that STI values at $1.6 million, implying a purchase price of $0.40 per share.

As previously disclosed, on February 26, 2020, STI, AIU Special Merger Company, Inc., a Delaware corporation and wholly-owned subsidiary of STI (Merger Sub), and Allied Integral United, Inc., a Delaware corporation (referred to as Clearday), entered into an Agreement and Plan of Merger (as amended on May 12, 2020), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Clearday, with Clearday continuing as a wholly-owned subsidiary of STI, and STI would amend its certificate of incorporation to effect a reverse stock split of its shares of common stock, par value $0.001 per share and change its name to Clearday, Inc.

STI received a 50% preferred equity interest in Naples JV LLC (Holdings), a single-asset holding company that owns 100% of the equity interests of a single-asset limited liability company (Property LLC) which, in turn, solely owns an un-encumbered fee simple interest in a three story commercial office building in San Antonio, Texas, that serves as the corporate headquarters of Clearday (the Building) and also has other medical office tenants. In addition, the Building, which is located in an opportunity zone, is expected to be the location for one of Clearday's adult daycare centers and to be a site to use and/or test a product to improve air quality utilizing STI's existing Cryogenic Cooler as an enabling technology for one of Clearday's service offerings in the home healthcare market.

Clearday owns the other 50% of Holdings in the form of common equity. STI has a $1.6 million preference over the Clearday common equity in connection with any liquidity event involving Holdings, Property LLC or the Building (such as a sale or refinancing of the Building), and each of Clearday and STI have a 50% interest in any ordinary course distributions from Holdings. STI's preferred interest is redeemed upon payment to STI of its full liquidation preference in cash.

As previously disclosed, STI was notified by the staff of The Nasdaq Stock Market that it did not satisfy the minimum $2.5 million stockholders' equity requirement (the "**Equity Rule**") for continued listing on The Nasdaq Capital Market or the minimum bid-price rule (the "**Price Rule**"). STI thereafter presented its plan to regain compliance with the Equity Rule and the Price Rule to the Nasdaq Hearings Panel, which granted the Company an extension, through July 6, 2020, to evidence full compliance with the Equity Rule and (due to a grace period provided related to the COVID-19 pandemic), through September 21, 2020 to evidence full compliance with the Price Rule.

The Company still intends to complete its merger with Clearday, however it has not yet filed a registration statement with the Securities and Exchange Commission for the merger due to delays in Clearday's initial audit to be a public company.

As a result of the private placement described in this press release, STI believes it satisfies the Equity Rule for continued listing on The Nasdaq Capital Market as of the date of this filing. STI intends to also satisfy the Price Rule by the extended compliance date by taking appropriate action, including through completion of the merger with Clearday and/or completion of a reverse stock split.

A current report on Form 8-K is being filed today containing additional important information and the transaction documents.

About Clearday, Inc.

Clearday is an innovative longevity care and wellness company, with a modern, hopeful vision for making high quality care options more accessible, affordable, and empowering for older Americans and those who love them. Through our subsidiary Memory Care America (MCA), we operate a network of highly rated residential memory care communities in four U.S. states. With our Clearday Clubs™ concept, we are bringing the same standard of excellence found in our MCA residential facilities to a daytime-only community model that is dramatically less expensive than residential care options. Learn more about Clearday and Clearday Clubs at myclearday.com

About Superconductor Technologies Inc. (STI)

Superconductor Technologies Inc. is a global leader in superconducting innovation. Since 1987, STI has led innovation in HTS materials, developing more than 100 patents as well as proprietary trade secrets and manufacturing expertise. For more than 20 years STI utilized its unique HTS manufacturing process for solutions to maximize capacity utilization and coverage for Tier 1 telecommunications operators. Headquartered in Austin, TX, Superconductor Technologies Inc.'s common stock is listed on the NASDAQ Capital Market under the ticker symbol "SCON." For more information about STI, please visit http://www.suptech.com.

Forward-Looking Statements

This communication contains forward-looking statements (including within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended) concerning STI, AIU, the proposed Merger, and other matters. These statements may discuss the valuation of the Building, goals, intentions and expectations as to future plans, trends, events, results of operations or financial condition, or otherwise, based on current beliefs of the management of STI, as well as assumptions made by, and information currently available to, management. Forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as "may," "will," "should," "would," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," and other similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties and are not guarantees of future performance. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation: the risk that the Building, which was not valued by a formal appraisal process, is worth less than the value STI attributes to it or that it declines in value in the future; the risk that STI's preferred interest in the Building is illiquid; the risk that the Nasdaq Hearing Panel does not agree that the Company has regained compliance with the Equity Rule, which could result in immediate delisting; the risk that even if the Company has regained compliance with the Equity Rule, it fails to regain compliance with the Price Rule by September 21, 2020, would could result in immediate delisting; the risk that the delay in consummating the merger will create increased expense to STI; the risk that the conditions to the closing of the proposed Merger are not satisfied, including the failure to obtain stockholder approval for the proposed Merger in a timely manner or at all; uncertainties as to the timing of the consummation of the proposed Merger and the ability of each of STI and AIU to consummate the Merger; risks related to STI's ability to correctly estimate and manage its operating expenses and its expenses associated with the proposed Merger pending closing; risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed Merger; risks associated with the possible failure to realize certain anticipated benefits of the proposed Merger, including with respect to future financial and operating results; the ability of STI or AIU to protect their respective intellectual property rights; competitive responses to the Merger and changes in expected or existing competition; unexpected costs, charges or expenses resulting from the proposed Merger; potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed Merger; regulatory requirements or developments; changes in capital resource requirements; and legislative, regulatory, political and economic developments. The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in STI's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current

Reports on Form 8-K filed with the SEC. STI can give no assurance that the conditions to the Merger will be satisfied. Except as required by applicable law, STI undertakes no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

Important Additional Information Will be Filed with the SEC

In connection with the proposed Merger, STI intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a proxy statement/prospectus/information statement. **INVESTORS AND STOCKHOLDERS OF STI ARE URGED TO READ THESE MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT STI, THE MERGER AND RELATED MATTERS**. Investors and stockholders will be able to obtain free copies of the proxy statement, prospectus and other documents filed by STI with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. In addition, investors and stockholders will be able to obtain free copies of the proxy statement, prospectus and other documents filed by STI with the SEC by contacting STI by mail at Superconductor Technologies Inc., 15511 W. State Hwy 71, Suite 110-105 Austin, TX 78738, (512) 650-7775, Attention: Corporate Secretary. Investors and stockholders are urged to read the proxy statement, prospectus and the other relevant materials when they become available before making any voting or investment decision with respect to the Merger.

No Offer or Solicitation

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Participants in the Solicitation

STI and its directors and executive officers and AIU and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of STI in connection with the Merger. Information regarding the special interests of these directors and executive officers in the Merger will be included in the proxy statement/prospectus/information statement referred to above. Additional information about STI's directors and executive officers is included in STI's definitive proxy statement filed with the SEC on April 26, 2019. These documents are available free of charge at the SEC website (www.sec.gov) and from the Corporate Secretary of STI at the address above.

Investor Relations Contact

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