Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT UNDER

THE SECURITIES ACT OF 1933

HEATWURX, INC.

(Exact name of registrant as specified in its charter)

Delaware	**3531**	**45-1539785**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

6041 South Syracuse Way, Suite 315 **Greenwood Village, CO 80111** **(303) 532-1641** **(303) 532-1642 (fax)**	**Howard J. Kern, PC** **579 Erskine Drive** **Pacific Palisades, California 90272** **(310) 857–6342** **(310) 882-6545 (fax)**
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)	*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

Copies to:

Adam J. Agron
Brownstein Hyatt & Farber, P.C.
410 17th Street, 22nd Floor
Denver, Colorado 80202
(303) 223-1100
(303) 223-1111 (fax)

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as practical after this registration statement is declared effective by the SEC.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐ Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☑

CALCULATION OF REGISTRATION FEE

Title of each class of **securities to be registered**	**Amount to be registered**	**Proposed maximum offering price per unit**	**Proposed maximum aggregate offering price (1)(2)**	**Amount of registration fee**
Common stock, $0.0001 par value, underlying units (2)	1,725,000 shares	$ 5.00	$8,625,000	$ 1,177
Warrant to acquire common stock at $5.00 per share underlying units (2)	862,500 warrants	$ 0.10	86,250	12
Common stock, $0.0001 par value, underlying $5.00 warrant (2)	862,500 shares	$ 5.00	4,312,500	588
Common stock, $0.0001 par value	1,450,000 shares	$ 5.00	7,250,000	989
Common stock, $0.0001 par value, underlying Series A Preferred Stock (3)	4,200,000 shares	$ 0.12	504,000	69
Common stock, $0.0001 par value, underlying Series B Preferred Stock (3)	1,500,000 shares	$ 2.00	3,000,000	409
Common stock, $0.0001 par value, underlying Series C Preferred Stock (3)	760,000 shares	$ 2.00	1,520,000	207
Total			$25,297,750	$3,451

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(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457 under the Securities Act, as amended.

(2) Includes offering price of shares that the Underwriter has the option to purchase to cover over-allotments, if any.

(3) Each share of Preferred Stock will convert automatically into common stock upon the closing of this offering. Series A, B and C Preferred Stock is convertible into common stock at $0.12, $2.00 and $2.00 per share.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

This Registration Statement contains two prospectuses.

The first prospectus forming a part of this Registration Statement is to be used in connection with the underwritten public offering of 1,500,000 units offered at $5.10 per unit. Each unit consists of one share of common stock and one half (1/2) common stock purchase warrant to acquire one share of common stock for $5.00 per share for a period of one year . A total of 1,500,000 units are being offered by the Company. The units will not trade separately. A selling stockholder has agreed to sell 200,000 shares of common stock and reserve another 100,000 shares for sale to cover a portion of the Underwriter's over-allotment option of 225,000 Units.

Accordingly, the registrant is registering 2,587,500 shares of common stock underlying the 1,725,000 units of common stock and warrants which includes 225,000 units subject to our Underwriter's overallotment option. The registrant is also registering 862,500 warrants underlying the units. The common stock and warrants underlying the units will be listed and traded separately as more fully disclosed in the first prospectus. The first prospectus immediately follows this explanatory note.

The second prospectus forming a part of this Registration Statement is to be used by stockholders of the registrant in connection with the resale of up to 1,450,000 shares of common stock and up to 6,460,000 shares of common stock issuable upon the automatic conversion of our Series A, B, and C Preferred Stock upon the effectiveness of this offering.

The second prospectus, which immediately follows the first prospectus, consists of:

- the cover page;
- Table of Contents;
- Prospectus Summary;
- pages 4 through 43 of the first prospectus, other than the sections entitled "Use of Proceeds," "Determination of Offering Price" and "Underwriting," and pages F-1 through F-17 of the first prospectus;
- pages SS-1 through SS-8 which will appear in place of the section entitled "Underwriting"; and
- the back cover page.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the Registration Statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS **Subject to completion, dated _____**

Heatwurx, Inc.

1,500,000 Units
$5.10 per Unit

This is the initial public offering of Heatwurx, Inc. Each unit consists of one share of common stock and one half (1/2) common stock purchase warrant which may be exercised to purchase one share of our common stock at $5.00 per share for a period of one year. A total of 1,500,000 units are being offered by the Company. No public market currently exists for our common stock or warrants. We anticipate that the initial public offering price will be $5.10 per unit. The units will not trade separately as units.

A selling stockholder has agreed to sell 200,000 shares of common stock and reserve another 100,000 shares for sale to cover a portion of the Underwriter's over-allotment option of 225,000 Units. We will not receive any proceeds from the sale of 200,000 units offered by a selling stockholder, nor from the exercise of warrants underlying these units.

We have also registered by separate prospectus the resale by our existing stockholders 1,450,000 shares of common stock and up to 6,460,000 shares of common stock issuable upon conversion of 2,860,000 shares of Series A, B and C Preferred Stock. Resale shares owned by officers and directors and by one common stockholder are subject to a 13 month lockup. See "Underwriting."

We have applied to list our common stock and $5.00 warrants for quotation on the NYSE MKT Exchange under the proposed symbols of "___" and "____," respectively.

We are a "smaller reporting company" as defined under the federal securities laws and are subject to reduced public reporting requirements.

Investing in our common stock and warrants involves risks that are described in the "Risk Factors" section beginning on page 4 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per unit	Total
Initial Public offering price	$ 5.10	$ 7,650,000
Underwriting discount and commissions	$ 0.408	612,000
Proceeds to us, before offering expenses	$ 4.692	$ 7,038,000

Our Underwriter is offering these units on a firm commitment basis and expects that delivery of the underlying common shares and warrants will be made on or about _____, 2012. To the extent that the Underwriter sells more than 1,500,000 units, the Underwriter has a 45-day option to purchase up to 25,000 additional units from us and 200,000 units from a selling stockholder at the initial public offering price less the underwriting discount to cover any overallotments. We will not receive any proceeds from the sale of the units by the selling stockholder, who will compensate the Underwriter directly.

Gilford Securities Incorporated

Prospectus dated , 2012

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Until ____, 2013, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as Underwriter and with respect to their unsold allotments or subscriptions.

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This prospectus contains statistical data, estimates and forecasts that are based on independent industry publications, other publicly available information and information based on our internal sources.

Neither we, the selling stockholders, nor the Underwriter have authorized anyone to provide you with information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. We take no responsibility for, and provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

Prospectus Summary

This summary highlights selected information that is presented in greater detail elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock. You should read this entire prospectus carefully, including the sections titled "Risk Factors," "Selected Consolidated Financial Data," "Management's Discussion and Analysis or Plan of Operation and "Business," and our consolidated financial statements and the related notes included elsewhere in this prospectus, before making an investment decision. Unless the context otherwise requires, the terms "Heatwurx," "our company," "we," "us," and "our" refer to Heatwurx Inc.

Heatwurx, Inc.

General

Heatwurx, Inc. was incorporated under the laws of the State of Delaware on March 29, 2011 as Heatwurxaq, Inc. and subsequently changed its name to Heatwurx, Inc. on April 15, 2011. Our founders were Larry Griffin and David Eastman, the principals of Hunter Capital Group, LLC, an investment banking entity, which acquired our technology, equipment designs, trademarks, and patent applications from Richard Giles, the inventor, in April 2011. In connection with the acquisition, we raised $1,000,000 in senior secured debt and $500,000 through the offering of Series A Preferred Stock to three investors. In October 2011, we completed a 7-1 forward stock split and raised gross proceeds of $3,000,000 through the sale of our Series B Preferred Stock. In August 2012, we raised gross proceeds of $1,520,000 through the sale of our Series C Preferred Stock. In August 2012, the proceeds from the sale of the Series C Preferred Stock were used to repay our secured debt.

We have not yet fully commercialized our products and we are therefore classified as a developmental stage enterprise.

We are an Original Equipment Manufacturer of Asphalt preservation and repair equipment. Our innovative, and eco-friendly hot-in-place recycling process corrects surface distresses within the top three inches of existing pavement by heating the surface material in excess of 300° Fahrenheit with our electrically powered infrared heating equipment, mechanically loosening the heated material with our processor/tiller attachment that is optimized for producing a seamless repair, and mixing in additional recycled asphalt pavement and a binder (asphalt-cement), and then compacting repaired area with a vibrating roller or compactor. We consider our equipment to be eco-friendly as the Heatwurx process reuses and rejuvenates distressed asphalt, uses recycled asphalt pavement for filler material, eliminates travel to and from asphalt batch plants, and extends the life of the roadway. We believe our equipment, technology and processes provide savings over other processes that are more labor and equipment intensive.

Our hot-in-place recycling process and equipment has been selected by the Technology Implementation Group of the American Association of State Highway Transportation Officials (AASHTO TIG) as an "additionally Selected Technology" for the year 2012. We develop, manufacture and intend to sell our unique, innovative and eco-friendly equipment to federal, state and local governmental agencies as well as contractors for the repair and rehabilitation of damaged and deteriorated asphalt surfaces.

Our executive offices are located at 6041 South Syracuse Way, Suite 315, Greenwood Village, Colorado 80111 and our telephone number is (303) 532-1641. Our website is www.heatwurx.com.

The offering

Securities outstanding prior to this offering:	
Common stock	1,900,000 shares
Preferred stock	2,860,000 shares (1)
Securities offered – units consisting of one share of common stock and one half of one warrant:	
Common stock underlying units	1,500,000 shares
Common stock purchase warrant to acquire common stock at $5.00 per share underlying units	750,000 warrants
Common stock underlying $5.00 warrants	750,000 shares
Common stock to be outstanding after this offering	9,860,000 shares (2)
Use of proceeds	We expect to use proceeds of this offering for dealer network development, executive management salaries and benefits, intellectual property development and protection, research and development, and general working capital purposes In the event that the Underwriter exercises its over-allotment option, we will not receive any proceeds from the sale of the 200,000 units offered by a selling stockholder, nor from the exercise of warrants underlying these units.
Risk factors	Please read "**Risk Factors**" for a discussion of factors you should consider before investing in our common stock or warrants.
Proposed NYSE MKT Exchange symbols:	
· Common stock	"____"
· $5.00 warrants	"____"

(1) Shares of Series A, B and C Preferred Stock will convert automatically into shares of common stock upon the closing date of this offering, as follows:

- Series A – 600,000 shares of Series A Preferred Stock are convertible into 4,200,000 shares of common stock at $0.12 per share;
- Series B – 1,500,000 shares of Series B Preferred Stock are convertible into 1,500,000 shares of common stock at $2.00 per share; and
- Series C – 760,000 shares of Series C Preferred Stock are convertible into 760,000 shares of common stock at $2.00 per share.

(2) Amount gives effect to the automatic conversion of all 2,860,000 shares of preferred stock to 6,460,000 shares of common stock but does not include:

- the issuance of 1,022,000 and 1,440,000 shares of common stock upon exercise of stock options and performance stock options, respectively;
- the issuance of 25,000 units that may be sold by the Company upon exercise of the Underwriter's overallotment option;
- the issuance of 762,500 shares of common stock underlying 762,500 outstanding warrants issued by the Company, including the issuance of 12,500 warrants that may be sold by the Company upon exercise of the Underwriter's overallotment option; and
- the issuance of 150,000 shares of common stock underlying warrants issued to our Underwriter in connection with this offering.

Risk Factors

An investment in our common stock and warrants involves a high degree of risk. You should carefully consider the risks described below, together with all of the other information included in this prospectus, before making an investment decision. If any of the following risks actually occurs, our business, financial condition, and/or results of operations could suffer. In that case, the trading price of our shares of common stock and warrants could decline, and you may lose all or part of your investment. You should read the section entitled "**Cautionary Note Regarding Forward-Looking Statements**" below for a discussion of what types of statements are forward-looking statements, as well as the significance of such statements in the context of this prospectus.

Risks Relating to the Company's Business

We have a limited operating history and there can be no assurance that we can achieve or maintain profitability. We have a limited operating history that can be used to evaluate us, and the likelihood of our success must be considered in light of the problems, expenses, difficulties, complications and delays that we may encounter because we are a small business. As a result, we may not be profitable and we may not be able to generate sufficient revenue to develop as we have planned.

Our ability to achieve and maintain profitability and positive cash flow is dependent upon and will continue to be dependent upon:

- the market's acceptance of our equipment;
- our ability to keep abreast of the changes by government agencies and in laws related to our business, particularly in the areas of intellectual property and environmental regulation;
- our ability to maintain any competitive advantage via patents, if attainable, or protection of our trade secrets;
- our ability to attract customers who require the products we offer;
- our ability to generate revenues through the sale of our products to potential customers; and
- our ability to manage the logistics and operations of the Company and the distribution of our products and services.

If we are unable to successfully manage these aspects of our business, our business, financial condition, and/or results of operations could suffer, the trading price of our shares of common stock and warrants could decline, and you may lose all or part of your investment.

We have incurred operating losses since formation. We expect to continue to incur net losses for the near term and may not be able to attain a level of profitability sufficient to sustain operations without additional sources of capital.

We have limited sales and a history of operating losses. We reported a net operating loss for the period from incorporation on March 29, 2011 to December 31, 2011, and for the nine month period ended September 30, 2012. We also had an accumulated deficit at December 31, 2011 and at September 30, 2012. We anticipate that we will continue to incur operating losses in the near term and we may not be able to achieve profitable operations. In order to achieve profitable operations we need to secure sufficient sales of our preservation and repair equipment. Our potential customers are federal, state, and local governmental entities, pavement contractors, equipment distributors and original equipment manufacturers. We cannot be certain that our business will be successful or that we will generate significant revenues and become profitable. If we are unable to achieve profitability or locate alternate sources of capital, we may be forced to cease operations.

We currently have a single manufacturer of our equipment. If our manufacturing partner chooses not to manufacture our equipment or is otherwise unable to timely manufacture our equipment, we may not be able to locate another manufacturing partner in a timely manner to satisfy future demand for our products.

We currently have only one manufacturing partner. We do not have any agreement with our manufacturing partner, who is free to discontinue manufacturing services for us or to increase prices charged to us. This arrangement is adequate for the near term as we do not have a large number of customer orders and do not have any urgent need for equipment. However, we anticipate that as our business grows, we will contract with additional manufacturing partners to protect us against business interruptions related to our current sole manufacturing partner. If we experience any business interruption in our manufacturing partner's business or if our manufacturing partner decides to discontinue manufacturing for us on agreeable terms, we may be unable to meet commitments to existing customers or attract new ones.

The growth of our business depends upon the development and successful commercial acceptance of our products. If we are unable to achieve successful commercial acceptance of our product, our business, financial condition, and/or results of operations could suffer.

We depend upon a variety of factors to ensure that our preservation and repair equipment is successfully commercialized, including timely and efficient completion of design and development, implementation of manufacturing processes, and effective sales, marketing, and customer service. Because of the complexity of our products, significant delays may occur between development, introduction to the market and volume production phases.

The development and commercialization of our preservation and repair equipment involves many difficulties, including:

- retention and hiring of appropriate operational, research and development personnel;
- determination of the products' technical specifications;
- successful completion of the development process;
- successful marketing of the preservation and repair equipment and achieving customer acceptance;
- obtain, manage and maintain key dealer relationships;
- produce products that meet the quality, performance and price expectations of our customers;
- develop effective sales, advertising and marketing programs; and
- manage additional customer service and warranty costs associated with supporting product modifications and/or subsequent potential field upgrades.

If we are unable to achieve successful commercial acceptance of our product, we may be unable to generate sufficient revenues to sustain operations and may be forced to cease operations.

We and our customers may be required to comply with a number of laws and regulations, both foreign and domestic, in the areas of safety, health and environmental controls. Failure to comply with government regulations could severely limit our sales opportunities and future revenues.

We intend to market our preservation and repair equipment domestically and internationally. We may be required to comply with local and international laws and regulations and obtain permits when required. We also cannot be certain that we will be able to obtain or maintain, required permits and approvals, that new or more stringent environmental regulations will not be enacted or that if they are, that we will be able to meet the stricter standards.

Failure to obtain operating permits, or otherwise to comply with federal and state regulatory and environmental requirements, could affect our abilities to market and sell our preservation and repair equipment and could have a

material adverse effect on our business, financial condition, and/or results of operations, the trading price of our shares of common stock and warrants could decline, and you may lose all or part of your investment.

Our ability to grow the business depends on being able to demonstrate our equipment to potential customers and distributors and train them on proper usage. If we do not add more demonstration teams, our growth is limited geographically.

Our current marketing efforts utilize two driver/trainers that transport our equipment to potential customers and distributors to demonstrate the value of our equipment and train them on the process. This team can travel approximately 1,000 miles in any direction to conduct the demonstrations and training. These efforts are very time-consuming and with high gas prices, very expensive. In order to overcome the natural geographic limitations, we intend to deploy demonstration equipment throughout the country and hire and train additional driver/trainers. These efforts will be dependent upon our ability (i) to raise capital to purchase and/or lease new demonstration equipment and (ii) to locate and hire qualified personnel. If we cannot raise additional capital or locate qualified personnel, it will be much more difficult to grow our business. If that happens, our stock and warrant price may decline and our investors may lose all or a part of their investment.

Commodity or component price increases and/or significant shortages of component products may erode our expected gross profit on sales and adversely impact our ability to meet commitments to customers.

We require steel for the manufacture of our products. Accordingly, increases in the price of steel could significantly increase our production cost. If we were unable to fully offset the effect of any such increased costs through price increases, productivity improvements, or cost reduction programs, our expected gross profit on sales would decline.

We also rely on suppliers to secure component products required for the manufacture of our products. We have no assurance that key suppliers will be able to increase production in a timely manner in the event of an increase in the demand for our products. A disruption in deliveries to or from suppliers or decreased availability of components could have an adverse effect on our ability to meet our commitments to customers or increase our operating costs. If component supply is insufficient for the demand for our products, we may be unable to meet commitments to existing customers or attract new ones.

Our business is subject to the risk that our customers and/or other companies will produce their own version of our equipment which could significantly reduce our expected product sales.

We intend to sell finished products through an independent dealer network and directly to OEMs. Some of our potential customers are OEMs that manufacture or could in the future manufacture their own products. Despite their manufacturing abilities, we believe that these customers have chosen to purchase from us due to the quality of our products and to reduce their production risks and maintain their company focus. There is also the risk that other companies will copy our equipment and will become our competitors. However, we have no assurance that these customers will place significant equipment orders with us or continue to outsource manufacturing in the future. Our sales would decline and our profit margin would suffer if our potential customers decide to produce their own version of our products or there is increased competition from other manufacturers.

Our future success is dependent, in part, on the performance and continued service of Stephen Garland and other key management personnel. Without their continued service, we may be forced to interrupt or cease operations.

We are presently dependent to a great extent upon the experience, abilities and continued services of Stephen Garland, our Chief Executive Officer, and our other executive officers, who are all at-will employees. Mr. Garland is responsible for the development, and with the other members of the executive team, the execution of our strategic vision. Mr. Garland also has developed and cultivated significant relationships in our industry that are critical to our success. As the Company grows and more people are added to the team over time, Mr. Garland will share his knowledge of our company and the industry with new hires, and we will not be dependent upon Mr. Garland or any other individual. However, until the Company grows, there is a disproportionate dependence upon Mr. Garland, and the loss of his services would significantly impair our business operations. Some companies reduce the risk of the

loss of key individuals by purchasing life insurance policies that pay the company upon the death of key personnel. We do not have a key man life insurance policy on Mr. Garland and do not intend to purchase one. If we interrupt or cease operations due to the loss of Mr. Garland's or other executive officer availability, we may be unable to service our existing customers or acquire new customers, and our business may suffer and our stock and warrant prices may decline.

The success of our business depends upon our ability to attract, retain and motivate highly skilled employees. If we experience any adverse outcome in such matters, our ability to grow and manage our business may suffer.

We currently rely upon outside consultants for many aspects of our operations. Our ability to execute our business plan and be successful depends upon our ability to attract, retain and motivate highly skilled employees. As we expand our business, we will need to hire additional personnel to support our operations. We may be unable to retain our key employees or attract other highly qualified employees in the future. If we fail to attract new personnel with the requisite skills and industry knowledge we will need to execute against our business plan, our business, financial condition, and/or results of operations could suffer.

The success of our business depends, in part, upon our infrared heating process and technical information which may be difficult to protect and may be perceived to infringe on the intellectual property rights of third parties. If we are unable to protect our products from being copied by others it may negatively impact our expected sales. Claims by others of infringement could prove costly to defend and if we are unsuccessful we could be forced into an expensive redesign of our products.

We believe that the identification, acquisition and development of our infrared heating process are key drivers of our business. Our success depends, in part, on our ability to obtain patents, and operate without infringing on the proprietary rights of third parties. We cannot assure you that:

- the patents of others will not have an adverse effect on our ability to conduct our business;
- our patents will be issued;
- our patents, if issued, will provide us with competitive advantages;
- patents, if issued, will not be challenged by third parties;
- we will develop additional proprietary technology that is patentable; or
- others will not independently develop similar or superior technologies, duplicate elements of our preservation and repair equipment or design around it.

In the future, we may be accused of patent infringement by other companies. To defend and/or settle such claims, we may need to acquire licenses to use, or to contest the validity of, issued or pending patents. We cannot assure you that any license acquired under such patents would be made available to us on acceptable terms, if at all, or that we would prevail in any contest regarding the issued or pending patents of others. In addition, we could incur substantial costs in defending ourselves in suits brought against us for alleged infringement of another party's patents or in defending the validity or enforceability of our patents, if any, or in bringing patent infringement suits against other parties based on our patents. Any negative outcome of a patent infringement case or failure to obtain license agreements would necessitate the need to redesign our products, which creates added expense. Such redesigned products may not be accepted in the market place and we may not be able to continue our operations.

Because we are smaller and have fewer financial and other resources than many other companies that manufacture and sell equipment for road repair work, we may not be able to successfully compete in the very competitive road repair work equipment industry.

There are over eleven million miles of paved roadways throughout the world. There is significant competition among companies that manufacture and sell equipment to repair existing roadways. Our business faces competition from companies that are much more connected to the decision-makers, have been in business for a longer period of time, and have the financial and other resources that would enable them to invest in new technologies if they chose to. These companies may be able to achieve substantial economies of scale and scope, thereby substantially reducing

their costs and the costs to their customers. If these companies are able to substantially reduce their marginal costs, the market price to the customer may decline and we may be not be able to offer our preservation and repair equipment at a price that allows us to compete economically. Even if we are able to operate profitably, these other companies may be substantially more profitable than us, which may make it more difficult for us to raise any financing necessary for us to achieve our business plan and may have a materially adverse effect on our business.

Mergers or other strategic transactions involving our competitors could weaken our competitive position, which could harm our operating results. If our competitors merge or are involved in other strategic transactions that place us at a disadvantage in the marketplace, our results of operations could decline.

Some of our competitors may enter into new alliances with each other or may establish or strengthen cooperative relationships. Any consolidation, acquisition, alliance or cooperative relationship could lead to pricing pressure and could result in a competitor with greater financial, technical, marketing, service and other resources which could result in a loss of our expected market share. If this occurs, our results of operations could decline.

Our long-term plan depends, in part, on our ability to expand the sales of our products to customers located outside of the United States and, accordingly, our business will be susceptible to risks associated with international operations. If we are unable to successfully manage the risks involved in international operations, the expected growth of our business may be negatively impacted.

We have no experience operating in foreign jurisdictions. We continue to explore opportunities outside of North America. Our lack of experience in operating our business outside of North America increases the risk that our current and any future international expansion efforts will not be successful. Conducting international operations subjects us to new risks that, generally, we do not face in the United States, including:

- fluctuations in currency exchange rates;
- unexpected changes in foreign regulatory requirements;
- longer accounts receivable payment cycles and difficulties in collecting accounts receivable;
- difficulties in managing and staffing international operations;
- potentially adverse tax consequences, including the complexities of foreign value added tax systems and restrictions on the repatriation of earnings;
- localization of our solutions, including translation into foreign languages and associated expenses;
- the burdens of complying with a wide variety of foreign laws and different legal standards, including laws and regulations related to privacy;
- increased financial accounting and reporting burdens and complexities;
- political, social and economic instability abroad, terrorist attacks and security concerns in general; and
- reduced or varied protection for intellectual property rights in some countries.

If we fail to manage the risks associated with international operations, expected international sales may not materialize or may not prove to be as profitable as anticipated.

We may be sued by claimants that allege that they were injured due to our equipment. Our business will be negatively impacted if we do not have sufficient insurance to protect us against these claims.

Any business today is at risk of becoming involved in lawsuits. It is extremely difficult to identify all possibly claims that could be made against us based on our business, but to name a few, we may be sued by drivers that claim that roads repaired by our equipment caused them to get into an automobile accident. Or a worker using our equipment to repair a road may claim that he or she was injured by our equipment. These claims may or may not be meritorious. In any event, we will attempt to protect ourselves against these claims by purchasing general liability insurance. There can be no assurance that we will be able to obtain the insurance or that it will be sufficient to protect us against future claims. Further, even if we obtain insurance, some of the litigation claims may not be

covered under our insurance policies, or our insurance carriers may seek to deny coverage. As a result, we might also be required to incur significant legal fees with no assurance of outcome, and we may be subject to adverse judgments or settlements that could significantly impair our ability to operate.

We may not maintain sufficient insurance coverage for the risks associated with our business operations. Accordingly, we may incur significant expenses for uninsured events and our business, financial condition and results of operations could be materially and adversely affected.

Risks associated with our business and operations include, but are not limited to, claims for wrongful acts committed by our officers, directors, employees and other representatives, the loss of intellectual property rights, the loss of key personnel and risks posed by natural disasters. Any of these risks may result in significant losses. We do not carry business interruption insurance. In addition, we cannot provide any assurance that our insurance coverage is sufficient to cover any losses that we may sustain, or that we will be able to successfully claim our losses under our insurance policies on a timely basis or at all. If we incur any loss not covered by our insurance policies, or the compensated amount is significantly less than our actual loss or is not timely paid, our business, financial condition and results of operations could be materially and adversely affected.

We have raised substantial amounts of capital in private placements and if it is determined that we failed to comply with applicable securities laws, we could be subject to rescission claims or lawsuits that could severely damage our financial position.

We have offered and sold securities in private placements to investors pursuant to certain exemptions from the registration requirements of the Securities Act of 1933, as well as those of various state securities laws. Such exemptions are highly technical in nature and the basis for relying on such exemptions is factual; that is, the applicability of such exemptions depends upon our conduct and that of those persons contacting prospective investors and making the offering. We have not received a legal opinion to the effect that any of our prior offerings were exempt from registration under any federal or state law. Instead, we have relied upon the operative facts as the basis for such exemptions, including information provided by investors themselves. If any prior offerings did not qualify for such exemption, an investor would have the right to rescind its purchase of the securities if it so desired. If investors were successful in seeking rescission, we would face severe financial demands that could adversely affect our business and operations. Additionally, if we did not in fact qualify for the exemptions upon which it has relied, we may become subject to significant fines and penalties imposed by the Securities and Exchange Commission and state securities agencies.

We have historically operated as a private company and have limited experience in complying with public company obligations. Complying with these requirements will increase our costs and require additional management resources. Even with additional resources we may fail to adequately comply with public company obligations and, as a result, the market price of our common stock and warrants could be negatively affected.

We will face increased legal, accounting, administrative and other costs and expenses as a public company. Compliance with the Sarbanes-Oxley Act of 2002, the Dodd-Frank Act of 2010, as well as rules of the Securities and Exchange Commission and the NYSE MKT, for example, will result in significant initial cost to us as well as ongoing increases in our legal, audit and financial compliance costs. The Securities Exchange Act of 1934, as amended, will require, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain the same or similar coverage.

As a public company, we will be subject to Section 404 of the Sarbanes-Oxley Act relating to internal controls over financial reporting. We expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Implementing any appropriate changes to our internal controls may require specific compliance training for our directors, officers and employees, entail substantial costs to modify our existing accounting systems, and take a significant period of time to complete. Such changes may not, however, be effective in maintaining the

adequacy of our internal controls, and any failure to maintain that adequacy, or consequent inability to produce accurate consolidated financial statements or other reports on a timely basis, could increase our operating costs and could materially impair our ability to operate our business. Although we have not identified any material weaknesses in our internal control over financial reporting to date, we cannot assure you that our internal control over financial reporting will prove to be effective.

If we fail to comply with our public company obligations, our investors may lose confidence in the Company, the market price of our common stock and warrants could be negatively affected, and investigations by stock exchange/regulatory agencies could commence requiring additional management and financial resources.

Risks Related to our Common Stock and Warrants:

The exercise of our warrants and options may result in a dilution of our current stockholders' voting power and an increase in the number of shares eligible for future resale in the public market which may negatively impact the trading price of our shares of common stock and warrants.

The exercise of some or all of our outstanding warrants and options could significantly dilute the ownership interests of our existing stockholders. At the effective date of this offering, we anticipate having outstanding warrants to purchase an aggregate of 1,012,500 shares of common stock, including (i) the warrant to purchase 150,000 shares of common stock issued to the Underwriter in connection with this offering and (ii) the warrants to purchase 862,500 shares of common stock at an exercise price of $5.00 per share issued pursuant to this offering (including 112,500 warrants issued pursuant to the Underwriter's overallotment option). Additionally, the issuance of up to 1,022,000 shares of common stock upon exercise of stock options and 1,440,000 performance stock options outstanding as of November 10, 2012 will further dilute our existing stockholders' voting interest. To the extent warrants and/or options are exercised, additional shares of common stock will be issued, and such issuance will dilute existing stockholders. Please see the section in this prospectus entitled "Dilution" for a tabular discussion of the theoretical impact of the warrants issued in this offering and the effects of the issuance of shares underlying such warrants on existing stockholders' economic and percentage ownership.

In addition to the dilutive effects described above, the exercise of those securities would lead to an increase in the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market could adversely affect the market price of our shares. Substantial dilution and/or a substantial increase in the number of common shares available for future resale may negatively impact the trading price of our shares of common stock and warrants.

As a new investor, you will experience immediate and substantial dilution in the net tangible book value of your shares.

The initial public offering price of our units in this offering reflects a common stock value that is considerably higher than the net tangible book value per share of our common stock. Investors purchasing shares of common stock and warrants in this offering will pay a price that substantially exceeds the value of our tangible assets after subtracting liabilities. As a result, investors will, as of September 30, 2012:

- incur immediate dilution of $4.28 per share of common stock, based on the $5.00 allocation of the initial public offering price of $5.10 per unit to a share of common stock; and
- contribute 60% of the total amount invested to date to fund our company based on the $5.00 allocation of the initial public offering price of $5.10 per unit to a share of common stock, but will own only 15% of the outstanding shares of common stock after the offering.

Provisions in our third amended and restated certificate of incorporation, our amended and restated bylaws or Delaware law might discourage, delay or prevent a change-of-control of our company or changes in our management and, therefore, depress the trading price of our common stock and warrants.

Provisions of our third amended and restated certificate of incorporation, our amended and restated bylaws, or Delaware law may have the effect of deterring unsolicited takeovers or delaying or preventing a change-of-control

of our company or changes in our management, including transactions in which our stockholders might otherwise receive a premium for their shares over then current market prices. In addition, these provisions may limit the ability of stockholders to approve transactions that they may deem to be in their best interest. These provisions include:

- advance notice requirements for stockholder proposals and nominations of directors;
- the inability of stockholders to call special meetings; and
- limitations on the ability of stockholders to remove directors without cause or amend our bylaws.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our common stock. They could also deter potential acquirers of the Company, thereby reducing the likelihood that you could receive a premium for your common stock in an acquisition.

We may seek to raise additional funds, finance acquisitions or develop strategic relationships by issuing capital stock that would dilute your ownership. If these activities result in significant dilution, it may negatively impact the trading price of our shares of common stock and warrants.

We have financed our operations, and we expect to continue to finance our operations, acquisitions, if any, and the development of strategic relationships by issuing equity and/or convertible securities, which could significantly reduce the percentage ownership of our existing stockholders. Furthermore, any newly issued securities could have rights, preferences and privileges senior to those of our existing securities. Any issuances by us of equity securities may be at or below the prevailing market price of our stock and in any event may have a dilutive impact on your ownership interest, which could cause the market price of our stock and/or warrants to decline. We may also raise additional funds through the incurrence of debt or the issuance or sale of other securities or instruments senior to our common shares. The holders of any securities or instruments we may issue may have rights superior to the rights of our common stockholders. If we experience dilution from issuance of additional securities and we grant superior rights to new securities over common stockholders, it may negatively impact the trading price of our shares of common stock and warrants, and you may lose all or part of your investment.

An active, liquid and orderly trading market for our common stock and warrants may not develop and the trading price of our common stock and warrants may be volatile. If an orderly trading market for our common stock and warrants does not develop and/or if the trading price for our common stock and warrants is volatile, the trading price of our shares of common stock and warrants may be negatively impacted.

Prior to this offering, there has been no public market for our common stock and warrants. The initial public offering price of our unit of one share of common stock and one half (1/2) common stock purchase warrant has been determined through negotiation with the Underwriter. This unit price will not necessarily reflect the price at which investors in the market will be willing to buy and sell our common stock or warrants following this offering. In addition, the trading price of our common stock and warrants following this offering is likely to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. If an orderly trading market for our common stock and warrants does not develop and/or if the trading price for our common stock and warrants is volatile, the trading price of our shares of common stock and warrants may be negatively impacted, and you may lose all or part of your investment.

In addition, the stock market in general, and the market for newly public companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock shortly following this offering. Historically, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against such a company. If securities class action litigation is instituted against us, it could result in substantial costs and a diversion of our management's attention and resources and our business, financial condition, and/or results of operations could suffer, the trading price of our shares of common stock and warrants could decline, and, accordingly, you may lose all or part of your investment.

A total of 7,910,000 of our total outstanding shares are being registered for resale. A total of 1,549,695 shares (excluding 630,000 shares of common stock issuable pursuant to vested stock options) are subject to lockup agreements with our Underwriter for a period of 13 months after the date of this prospectus and the balance of 6,360,305 shares may be sold immediately on the NYSE MKT Exchange. The large number of shares eligible for public sale could depress the market price of our common stock and warrants.

The market price of our common stock and warrants could decline as a result of sales of a large number of shares of our common stock in the market after this offering, and the perception that these sales could occur may also depress the market price of our common stock and warrants. Based on shares outstanding as of November 10, 2012, we will have 9,860,000 shares of common stock outstanding after this offering. All of these shares of common stock will be freely tradable in the United States. The holders of 1,549,695 shares of outstanding common stock and 630,000 vested stock options have agreed with the Underwriter, subject to certain exceptions, not to dispose of or hedge any of their common stock (including the common stock issuable upon exercise of the vested stock options) during the 13-month period beginning on the date of this prospectus, except with the prior written consent of our Underwriter. After the expiration of the 13-month restricted period, these shares may be sold in the public market in the United States, subject to prior registration in the United States, if required, or reliance upon an exemption from U.S. registration.

In addition, upon completion of this offering, we intend to file a registration statement to register 1,800,000 shares of our outstanding common stock reserved for future issuance under our equity compensation plans. Upon the effectiveness of that registration statement, subject to the satisfaction of applicable exercise periods and, in certain cases, lock-up agreements with the representatives of the Underwriter referred to above, the shares of common stock issued upon exercise of outstanding options will be available for immediate resale in the United States in the open market.

Sales of our common stock, as lockup restrictions end, may depress the price of our common stock and warrants making it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause our stock price to fall and make it more difficult for you to sell shares of our common stock and warrants, and, accordingly, you may lose all or part of your investment.

Ownership of our common shares is concentrated and you and other investors will have minimal influence on stockholder decisions.

As of November 10, 2012, our executive officers, directors, and a small number of investors, beneficially owned an aggregate of 6,959,689 shares of common stock and/or preferred stock convertible into common stock, representing approximately 66% of the voting power of our then-outstanding capital stock. As a result, our existing officers, directors, and such investors could significantly influence stockholder actions of which you disapprove or that are contrary to your interests. This ability to exercise significant influence could prevent or significantly delay another company from acquiring or merging with us and the trading price of our shares of common stock and warrants could decline, and, accordingly, you may lose all or part of your investment.

Securities analysts may not cover our common stock and this may have a negative impact on the market price of our common stock and warrants.

The trading market for our common stock and warrants may depend on the research and reports that securities analysts publish about us or our business. We do not have any control over these analysts. There is no guarantee that securities analysts will cover our common stock. If securities analysts do not cover our common stock, the lack of research coverage may adversely affect the market price of our common stock and warrants. If we are covered by securities analysts, and our stock is downgraded, the price of our stock and warrants would likely decline. If one or more of these analysts ceases to cover us or fails to publish regularly reports on us, we could lose or fail to gain visibility in the financial markets, which could cause a decline in our stock and warrant price and/or trading volume, and, accordingly, you may lose all or part of your investment.

The application of the Securities and Exchange Commission's "penny stock" rules to our common stock could limit trading activity in the market, and our stockholders may find it more difficult to sell their stock.

If our common stock trades at less than $5.00 per share, then it will be subject to the Securities and Exchange Commission's ("SEC") penny stock rules. Penny stocks generally are equity securities with a price of less than $5.00. Penny stock rules require a broker-dealer, prior to a transaction in a penny stock not otherwise exempt from the rules, to deliver a standardized risk disclosure document that provides information about penny stocks and the risks in the penny stock market. The broker-dealer also must provide the customer with current bid and offer quotations for the penny stock, the compensation of the broker-dealer and its salesperson in the transaction, and monthly account statements showing the market value of each penny stock held in the customer's account. The broker-dealer must also make a special written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's written agreement to the transaction. These requirements may have the effect of reducing the level of trading activity, if any, in the secondary market for a security that becomes subject to the penny stock rules. The additional burdens imposed upon broker-dealers by such requirements may discourage broker-dealers from effecting transactions in our securities, which could severely limit their market price and liquidity of our securities. These requirements may restrict the ability of broker-dealers to sell our common stock and may affect your ability to resell our common stock which may depress the market price of our common stock and warrants and, accordingly, you may lose all or part of your investment.

We do not intend to pay dividends for the foreseeable future, and you must rely on increases in the market prices of our common stock and warrants for returns on your investment.

For the foreseeable future, we intend to retain any earnings to finance the development and expansion of our business, and we do not anticipate paying any cash dividends on our common stock. Accordingly, investors must be prepared to rely on sales of their common stock and warrants after price appreciation to earn an investment return, which may never occur. Investors seeking cash dividends should not purchase our common stock. Any determination to pay dividends in the future will be made at the discretion of our Board of Directors and will depend on our results of operations, financial condition, contractual restrictions, restrictions imposed by applicable law and other factors our Board of Directors deems relevant.

We will have broad discretion over the use of the net proceeds from this offering and may not use them effectively.

Our management will have broad discretion to use the net proceeds of this offering for a variety of purposes, including, further development of our products and operations, working capital, and general corporate purposes. We may spend or invest these proceeds in a way with which our stockholders disagree. Failure by our management to effectively use these funds could harm our business and financial condition. Until the net proceeds are used, they may be placed in investments that do not yield a favorable return to our investors, do not produce significant income or lose value. See "**Use of Proceeds**."

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward looking statements that involve risks and uncertainties, principally in the sections entitled "**Description of Business**," "**Risk Factors**," and "**Management's Discussion and Analysis of Financial Condition and Results of Operations**." All statements other than statements of historical fact contained in this prospectus, including statements regarding future events, our future financial performance, business strategy and plans and objectives of management for future operations, are forward-looking statements. We have attempted to identify forward-looking statements by terminology including "**anticipates**," "**believes**," "**can**," "**continue**," "**could**," "**estimates**," "**expects**," "**intends**," "**may**," "**plans**," "**potential**," "**predicts**," "**should**," or "**will**" or the negative of these terms or other comparable terminology. Although we do not make forward looking statements unless we believe we have a reasonable basis for doing so, we cannot guarantee their accuracy. These statements are only predictions and involve known and unknown risks, uncertainties and other factors, including the risks outlined under "**Risk Factors**" or elsewhere in this prospectus, which may cause our or our industry's actual results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time and it is not

possible for us to predict all risk factors, nor can we address the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause our actual results to differ materially from those contained in any forward-looking statements. All forward-looking statements included in this document are based on information available to us on the date hereof, and we assumes no obligation to update any such forward-looking statements.

You should not place undue reliance on any forward-looking statement, each of which applies only as of the date of this prospectus. Before you invest in our securities, you should be aware that the occurrence of the events described in the section entitled "**Risk Factors**" and elsewhere in this prospectus could negatively affect our business, operating results, financial condition and stock price. Except as required by law, we undertake no obligation to update or revise publicly any of the forward-looking statements after the date of this prospectus to conform our statements to actual results or changed expectations.

Selling Stockholder

This prospectus includes the sale of up to 300,000 shares underlying 200,000 units that maybe sold to the Underwriter by a common stockholder in the event that our Underwriter exercises its over-allotment option.

The 300,000 shares of common stock underlying the 200,000 units were issued as follows. These shares were acquired by the selling stockholder in April 2011 upon consummation of the purchase by us of certain of our assets from the selling stockholder in a transaction that was exempt under Section 4(a)(2) of the Securities Act of 1933.

The following table sets forth information regarding the shares of common stock owned beneficially as of November 10, 2012, by the selling stockholder, Mr. Richard Giles. Mr. Giles owns more than 5% of the outstanding shares of Company common stock. He was a director of the Company from April 2011 to June 2012 and has been a consultant of the Company from April 2011 to the present.

	Common stock			
Name of selling stockholder	**Shares owned prior to offering (1)**	**Shares being Offered (2)**	**Shares owned after offering (3)**	**Percentage owned after offering (3)**
Richard Giles	1,417,500	300,000	1,117,500	11%

(1) Includes 30,000 vested performance options.

(2) Shares underlying 200,000 units constitute 200,000 shares of common stock and up to 100,000 shares of common stock upon exercise, if any, of 100,000 warrants included in the units.

(3) Amount gives effect to the automatic conversion of all 2,860,000 shares of preferred stock to 6,460,000 shares of common stock and 30,000 vested performance options but does not include:

- the issuance of 1,022,000 and 1,410,000 shares of common stock upon exercise of stock options and performance stock options, respectively;
- the issuance of 762,500 shares of common stock underlying 762,500 outstanding warrants, including the issuance of 12,500 warrants upon exercise of our Underwriter's overallotment option; and
- the issuance of 150,000 shares of common stock underlying warrants issued to our Underwriter in connection with this offering.

Use of Proceeds

We estimate that our net proceeds from this offering will be approximately $6,550,000, after deducting underwriting discounts and commissions of $612,000, our Underwriter's expenses and our estimated offering expenses of $488,000. We will receive additional net proceeds of up to $117,300, after deducting $10,200 in underwriting discounts and commissions, if our Underwriter exercises its overallotment option to purchase up to 25,000 additional units from us, for total combined net proceeds of $6,667,300.

If our Underwriter exercises its over-allotment option and purchases 200,000 units from a selling stockholder, we will not receive any proceeds from the sale of the 200,000 units nor from the issuance of the additional 100,000 shares of common stock upon the exercise of warrants underlying these units. The warrants underlying the units offered by the selling stockholder are identical to the warrants underlying the units offered by us. The first proceeds from the exercise of any warrants will go to us. All amounts in excess of the aggregate exercise price of the warrants sold by us will go to the selling stockholder.

We intend to use the net proceeds of this offering for dealer network development, executive management salaries and benefits, intellectual property development and protection, research and development, and general working capital purposes as detailed below. Our planned capital expenditures for activities during calendar 2012 and 2013 that are to be funded from the proceeds of this offering are as follows:

	Use of proceeds			
Purpose	**Without overallotment**	**Percent**	**With overallotment**	**Percent**
General working capital purposed	$ 3,970,000	60.6%	$ 4,087,300	61.3%
Dealer network development	1,200,000	18.3%	1,200,000	18.0%
Executive management salaries and benefits	720,000	11.0%	720,000	10.8%
Intellectual property development and protection	360,000	5.5%	360,000	5.4%
Research and development	300,000	4.6%	300,000	4.5%
	$ 6,550,000	100.0%	$ 6,667,300	100.0%

The following table summarizes the maximum proceeds from the exercise of our warrants, excluding 100,000 warrants underlying the sale of 200,000 units by a selling stockholder upon exercise of the Underwriter's overallotment option. The warrants expire one year from the date of issuance.

Warrant summary	**Number of warrants**	**Exercise price**	**Maximum proceeds**
Warrants issued in this offering	750,000	$ 5.00	$ 3,750,000
Warrants issuable under our Underwriter's over-allotment option	12,500	$ 5.00	62,500
	762,500		$ 3,812,500

We intend to use the net proceeds from the exercise of warrants, if any, for general working capital purposes.

Pending our application of proceeds as we have described, we will invest proceeds in short-term, investment grade interest bearing securities.

Dividend Policy

We have never declared or paid cash dividends on our common stock. We currently intend to retain future earnings to finance the operation, development and expansion of our business. We do not anticipate paying cash dividends on our common stock in the foreseeable future. Payment of future cash dividends, if any, will be at the discretion of our Board of Directors and will depend on our financial condition, results of operations, contractual restrictions, capital requirements, business prospects and other factors that our Board of Directors considers relevant.

Capitalization

The following table sets forth our unaudited capitalization as of September 30, 2012. Our capitalization is presented:

- on an actual basis; and
- on an as adjusted basis to reflect the sale of 1,500,000 units offered by the Company at $5.10 per unit, after deducting estimated underwriting expenses and commissions and offering expenses payable by us, and the conversion of all of our preferred stock into 6,460,000 shares of common stock.

You should read this table together with "**Management's Discussion and Analysis or Plan of Operation**," the financial statements and notes thereto and other information appearing elsewhere in this prospectus.

	As of September 30, 2012	
	Actual	**As adjusted**
	(unaudited)	(unaudited)
Stockholders' equity:		
Common stock, $0.0001 par value: 20,000,000 shares authorized, 1,750,000 issued and outstanding (actual) and 3,250,000 issued and outstanding (as adjusted)	$ 175	$ 971
Series A Preferred Stock, $0.0001 par value: 600,000 authorized, 600,000 issued and outstanding (actual) and no shares issued and outstanding (as adjusted)	60	-
Series B Preferred Stock, $0.0001 par value: 1,500,000 authorized, 1,500,000 issued and outstanding (actual) and no shares issued and outstanding (as adjusted)	150	-
Series C Preferred Stock, $0.0001 par value: 760,000 authorized, 760,000 issued and outstanding (actual) and no shares issued and outstanding (as adjusted)	76	-
Additional paid-in capital	5,666,101	12,065,951
Share purchase warrants	-	150,000
Accumulated deficit	(2,610,530)	(2,610,530)
Total stockholders' equity	3,056,032	9,606,392
Total capitalization	$ 3,056,032	$ 9,606,392

The information provided above excludes:

- 1,022,000 and 1,440,000 shares of common stock issuable upon exercise of outstanding stock options and performance stock options, respectively;
- up to 25,000 shares of common stock issuable upon exercise of our Underwriter's overallotment option;
- up to 762,500 shares of common stock issuable upon exercise of warrants issued by the Company, including the 12,500 warrants issuable upon exercise of our Underwriter's overallotment option; and
- 150,000 shares of common stock issuable upon exercise of our Underwriter's warrants.

Determination of Offering Price

The price of the units we are offering was arbitrarily determined in order for us to raise up to a total of $7,650,000 in this offering, assuming no exercise of the Underwriter's overallotment option. The offering price bears no relationship whatsoever to our assets, earnings, book value or other criteria of value. Among the factors considered were:

- our lack of operating history,
- the proceeds to be raised by the offering,
- the amount of capital to be contributed by purchasers in this offering in proportion to the amount of stock to be retained by our existing stockholder, and
- our relative cash requirements.

Dilution

Our pro forma net tangible book value (unaudited) as of September 30, 2012 was $556,032, or $0.07 per share of common stock and common stock equivalents. Our pro forma net tangible book value per share represents our total tangible assets at September 30, 2012, less total liabilities, divided by the pro forma total number of shares of common stock outstanding at such date. The pro forma total number of shares of common stock outstanding assumes that all 2,860,000 shares of our preferred stock convert into 6,460,000 shares of common stock. The dilution in pro forma net tangible book value per share represents the difference between the $5.10 price paid by purchasers of units in this offering ($5.00 of which is attributable to the common stock and $0.10 of which is attributable to the warrants) and the net tangible book value per share of our common stock immediately following this offering.

After giving effect to the sale of 1,500,000 units offered by us at $5.10 per unit and after deducting estimated underwriting discounts and commissions, and offering expenses payable by us, our pro forma net tangible book value, as adjusted, as of September 30, 2012 would have been approximately $7,039,532 or $0.72 per share of common stock. This amount represents an immediate increase in pro forma net tangible book value of $0.65 per share to the existing stockholders and an immediate dilution in pro forma net tangible book value of $4.28 per share of common stock to new investors purchasing units in this offering.

The following table illustrates the dilution in pro forma net tangible book value per share to new investors.

Offering price per unit attributable to common stock		$ 5.00
Pro forma net tangible book value (unaudited) as of September 30, 2012	$ 0.07	
Increase per share resulting from this offering	0.65	
Pro forma net tangible book value after this offering		0.72
Dilution per share to new investors in this offering		$4.28
Percentage dilution to new investors		86%

The following table summarizes on a pro forma basis, as of September 30, 2012, the number of shares of common stock purchased from us, the total consideration paid to us, and the average price per share paid by existing stockholders and new investors purchasing units in this offering, before estimated offering expenses:

	Shares purchased		Total consideration		Average price
	Number	Percent	Amount	Percent	per share
Common stockholders'	1,750,000	18%	$ -	-%	$ 0.00
Series A Preferred stockholders	4,200,000	43%	500,000	4%	$ 0.12
Series B Preferred stockholders	1,500,000	15%	3,000,000	24%	$ 2.00
Series C Preferred stockholders	760,000	8%	1,520,000	12%	$ 2.00
New investors	1,500,000	16%	7,500,000	60%	$ 5.00
Total	9,710,000	100%	$12,520,000	100%	

The information for existing stockholders in the table above:

- assumes the conversion of all 2,860,000 shares of preferred stock into 6,460,000 shares of common stock;
- excludes shares of common stock issuable upon exercise of outstanding stock options and outstanding warrants, warrants purchased in this offering, warrants issuable upon exercise of our Underwriter's overallotment option and warrants issued to our Underwriter in this offering;
- excludes the sale of 200,000 units by a selling stockholder; and
- attributes $5.00 of the $5.10 unit price to the common stock and $0.10 to the warrants.

Management's Discussion and Analysis or Plan of Operation

You should read the following discussion of the financial condition and plan of operation in conjunction with our Heatwurx and predecessor carve-out financial statements and the notes to financial statements included elsewhere in this prospectus. Heatwurx, Inc. was incorporated on March 29, 2011 and we commenced operations on that date. However, as there was no financial activity subsequent to the date of incorporation on March 29, 2011 through April 15, 2011, the Company is using April 16, 2011 as the date of incorporation for the purpose of the financial statements including in this filing (other than the Company's Statement of Stockholders' Equity which includes the common stock issued upon the Company's actual incorporation date of March 29, 2011). On April 15, 2011, we entered into an asset purchase agreement with Mr. Richard Giles, a current stockholder of Heatwurx, Inc. Pursuant to the agreement, we purchased the related business and activities of the design, manufacture and distribution of asphalt repair machinery under the Heatwurx brand.

Mr. Giles began developing the Heatwurx business during 2009. The financial statements of Heatwurx included in this prospectus as of December 31, 2010, for the year ended December 31, 2010 and for the period from January 1, 2011 through April 15, 2011 (date of acquisition of the Heatwurx business from Mr. Giles' construction business have been disaggregated, or "carved-out" of the financial statements of Mr. Giles construction business, as our "predecessor". These carved-out financial statements form what we refer to herein as the financial statement of our predecessor, and include both direct and indirect expenses. The historical direct expenses consist primarily of the various cost of development of the Heatwurx equipment (technology, design, etc.), incurred by Mr. Giles construction business on behalf of Heatwurx. Indirect expenses represent principally the estimated time Mr. Giles spent on Heatwurx activities. In addition, the net intercompany activities between predecessor and Mr. Giles Construction business have been accumulated in a single caption entitled, "Divisional Net Equity".

The Heatwurx financial information as of December 31, 2011 and September 30, 2012, for the period from April 16, 2011 (date of incorporation) through December 31, 2011 and for the nine months ended September 30, 2012 are referred to in this prospectus as the financial information of the successor.

*The following discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of various factors, including those discussed in "**Risk Factors**" and elsewhere in this prospectus.*

Overview and Basis of Presentation

Heatwurx, Inc. was incorporated under the laws of the State of Delaware on March 29, 2011 as Heatwurxaq, Inc. and subsequently changed its name to Heatwurx, Inc. on April 15, 2011. We have not yet fully commercialized our products and we are therefore classified as a development stage enterprise.

We are an Original Equipment Manufacturer of Asphalt preservation and repair equipment. Our innovative, and eco-friendly hot-in-place recycling process corrects surface distresses within the top 3 inches of existing pavement by heating the surface material in excess of 300° Fahrenheit with our electrically powered infrared heating equipment, mechanically loosening the heated material with our processor/tiller attachment that is optimized for producing a seamless repair, and mixing in additional recycled asphalt pavement and a binder (asphalt-cement), and then compacting repaired area with a vibrating roller or compactor. We consider our equipment to be eco-friendly as the Heatwurx process reuses and rejuvenates distressed asphalt, uses recycled asphalt pavement for filler material, eliminates travel to and from asphalt batch plants, and extends the life of the roadway. We believe our equipment, technology and processes provide savings over other processes that can be more labor and equipment intensive.

Our hot-in-place recycling process and equipment has been selected by the Technology Implementation Group of the American Association of State Highway Transportation Officials (AASHTO TIG) as an "additionally Selected Technology" for the year 2012. We develop, manufacture and intend to sell our unique and innovative and eco-friendly equipment to federal, state and local agencies as well as contractors for the repair and rehabilitation of damaged and deteriorated asphalt surfaces.

Critical Accounting Policies and Estimates

Use of Estimates

Management's discussion and analysis of our financial condition and results of operations include the predecessor's financial statements for the periods through April 15, 2011 and the successor's financial statements for the period ended September 30, 2012. The preparation of these financial statements requires management to make estimates, allocations and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, management evaluates its estimates, including those related to impairment of long-lived assets, accrued liabilities and certain expenses. We base our estimates about the carrying values of assets and liabilities that are not readily apparent from other sources on historical experience and on other assumptions believed to be reasonable under the circumstances. Actual results may differ materially from these estimates under different assumptions or conditions. Additionally, the financial information included here may not necessarily reflect the financial position, operating results, changes in our invested equity and cash flows in the future or what they would have been had we been a separate, stand-alone entity during the periods presented.

We believe the following critical accounting policies involve significant judgments and estimates used in the preparation of our financial statements.

Revenue Recognition

To date, our revenue has been immaterial. Equipment sales revenue is recognized when equipment is shipped to our customer and collection is reasonably assured.

Research and Development Expenses

Research and development costs are expensed as incurred and consist of direct and overhead-related expenses. Expenditures to acquire technologies, including licenses, which are utilized in research and development and that have no alternative future use are expensed when incurred. Technology we develop for use in our products is expensed as incurred until technological feasibility has been established after which it is capitalized and depreciated.

Stock-based Compensation

We account for stock-based compensation in accordance with Statement of Accounting Standard ("SFAS") 123(R) "Share-based Payment (Revised 2004)" ("SFAS 123(R)") and compensation cost for all share-based payments, based on the grant-date fair value estimated in accordance with the provisions of SFAS 123(R), is recognized as an expense over the requisite service period.

The fair value of each option grant is estimated using the Black-Scholes option-pricing model. We account for equity instruments issued to non-employees in accordance with the provisions of SFAS 123(R), Emerging Issues Task Force Issue ("EITF") No. 96-18, Accounting for Equity Instruments that are Issued to other than Employees for Acquiring, or in Conjunction with Selling Goods or Services and EITF 00-18, Accounting Recognition for Certain Transactions involving Equity Instruments Granted to Other Than Employees, as amended, which require that such equity instruments be recorded at their fair value on the measurement date.

Non-employee share-based compensation charges generally are immediately vested and have no future performance requirements by the non-employee and the total share-based compensation charge is recorded in the period of the measurement date.

Impairment of Long-Lived Assets

We review long-lived assets for impairment on an annual basis, as of December 31, or on an interim basis if an event occurs that might reduce the fair value of such assets below their carrying values. An impairment loss would

be recognized based on the difference between the carrying value of the asset and its estimated fair value, which would be determined based on either discounted future cash flows or other appropriate fair value methods.

Results of operations

Our results of operations include the activity of the successor for the period from April 16, 2011 (date of incorporation) through September 30, 2012 and the activity of our predecessor for the periods prior to April 15, 2011. As such, our discussion for the relevant periods described below at times refers to the combined activity of the successor and predecessor.

For the nine months ended September 30, 2012, our net loss was $1,650,000, compared to a loss of $305,000 (consisting of a loss of $344,000 from the successor and income of $39,000 from the predecessor), for the nine months ended September 30, 2011. We incurred net losses of $902,000 (consisting of a loss of $941,000 from the successor and income of $39,000 from the predecessor) and $160,000 for the years ended December 31, 2011 and 2010, respectively, based on the methodology used in carving out our financial information from Mr. Richard Giles' construction business, as described elsewhere in this prospectus. Further description of these losses is provided below.

Revenue

Revenue decreased from approximately $149,000 for the nine months ended September 30, 2011 (consisting of $143,000 from the predecessor and $6,000 from the successor) to $161,000 for the nine months ended September 30, 2012. Revenue for the nine months ended September 30, 2011 consisted principally of the sale of prototype equipment units (each unit consisting of one HWX-30 heating unit and one HWX-AP-40 asphalt processor) for $135,000. Revenue for the nine months ended September 30, 2012 consisted of sales of both the HWX-30 and HWX-AP-40 units to customers.

Revenue increased from approximately $136,000 for the year ended December 31, 2010 to $159,000 for the year ended December 31, 2011. Given we are still in a start-up stage, sales of our equipment have not been material to date. Accordingly, for accounting purposes we consider ourselves to be a development stage company.

Cost of goods sold

Cost of goods sold increased from approximately $78,000 for the nine months ended September 30, 2011 (consisting of $78,000 from the predecessor and $0 from the successor) to $100,000 for the nine months ended September 30, 2012.

Cost of goods sold decreased from approximately $146,000 for the year ended December 31, 2010 to $77,000 for the year ended December 31, 2011 (consisting of $77,000 from the predecessor and $0 from the successor). The decrease is principally due to the higher costs of product during 2010 when the predecessor was still working to standardize the prototype equipment.

Selling, general and administrative

Selling, general and administrative expenses increased from approximately $196,000 for the nine months ended September 30, 2011 (consisting of $13,000 from the predecessor and $183,000 from the successor) to $1,203,000 for the nine months ended September 30, 2012. The increase in selling, general and administrative expenses is principally due to stock-based compensation recorded for the nine months ended September 30, 2012 related to stock option grants for directors, officers and a consultant, increased employee expenses related to the hiring of company employees and marketing costs incurred with an outside consulting firm, among other costs.

Selling, general and administrative expenses increased from $44,000 for the year ended December 31, 2010 to $625,000 for the year ended December 31, 2011 (consisting of $13,000 from the predecessor and $612,000 from the successor). The increase in selling, general and administrative expenses is principally due to equipment rental, trade shows and promotional expenses, among other items. The increase in selling, general and administrative expenses is

principally due to stock-based compensation recorded for the year ended December 31, 2011 related to stock option grants for directors, officers and a consultant and increased expenses related to the hiring of company employees.

Research and Development

Research and development increased from $69,000 for the nine months ended September 30, 2011 (consisting of $15,000 from the predecessor and $55,000 from the successor) to $355,000 for the nine months ended September 30, 2012. The principal reason for the increase is due to legal and other intellectual property consulting fees related to our research on technology and process that may be patentable incurred during the nine months ended September 30, 2012.

Research and development increased from $106,000 for the year ended December 31, 2010 to $188,000 for the year ended December 31, 2011 (consisting of $14,000 from the predecessor and $174,000 from the successor). The increase in research and development cost during 2011 consist principally of payments to the founder of the Heatwurx business who worked on research and development surrounding the Company's equipment during 2011.

Income taxes

Prior to April 16, 2011, we operated as part of Mr. Richard Giles general construction business. The tax benefits related to the carved-out expenses benefit Mr. Giles construction business since the carved-out Heatwurx activities were part of Mr. Giles construction business. Because the carve-out tax benefits belong to Mr. Giles construction business, we are not given credit for the tax losses in the accompanying financial statements. Heatwurx, the successor company, has incurred tax losses since it began operations. A tax benefit would have been recorded for losses incurred since April 16, 2011; however, due to the uncertainty of realizing these assets, a valuation allowance was recognized which fully offset the deferred tax assets.

Liquidity and capital resources

On April 15, 2011, we entered into an Asset Purchase Agreement with an individual who is a current stockholder. Pursuant to the agreement, we purchased the related business and activities of the design, manufacture and distribution of asphalt repair machinery under the Heatwurx brand. The total purchase price was $2,500,000. The purchase price was paid in a $1,500,000 cash payment and the issuance of a senior subordinated note to the seller in the amount of $1,000,000.

To date we have relied exclusively on private placements with a small group of investors to finance our business and operations. We have had little revenue since our inception. Although we believe we have adequate working capital to support our currently planned level of operations through the end of 2012, it will be necessary for us to obtain additional financing to fund our operations, including general and administrative expenses, subsequent to year end. Although we believe we may be able to obtain some limited financing through additional bridge loans with our current investor group, we currently have no commitment from any third parties to provide us with capital or additional funding. We cannot assure that additional debt or equity or other funding will be available to us on acceptable terms, if at all. If we fail to obtain additional funding when needed, we would be forced to scale back, or terminate or operations, or seek to merge with or be acquired by another company.

If we successfully complete our initial public offering, we believe the proceeds we will receive from the offering will be sufficient to fund our operations, including our expected capital expenditures, through at least the end of 2013.

Recent accounting pronouncements

In May 2011, the Financial Accounting Standards Board ("FASB") issued ASU 2011-04, *Fair Value Measurement* ("ASU 2011-04"), which amended ASC 820, *Fair Value Measurements* ("ASC 820"), providing a consistent definition and measurement of fair value, as well as similar disclosure requirements between U.S. Generally Accepted Accounting Principles ("GAAP") and International Financial Reporting Standards. ASU 2011-04 changes certain fair value measurement principles, clarifies the application of existing fair value measurement and expands the disclosure requirements. ASU 2011-04 will be effective for us for the fiscal year beginning January 1, 2012. The

adoption of ASU 2011-04 is not expected to have a material effect on the Company's financial statements or disclosures.

In September 2011, the FASB issued ASU 2011-05, *Comprehensive Income (Topic 20): Presentation of Comprehensive Income* ("ASU 2011-05"), which is effective for annual reporting periods beginning after December 31, 2011. ASU 2011-05 will become effective for us for the fiscal year beginning January 1, 2012. The guidance eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. In addition, items of other comprehensive income that are reclassified to profit or loss are required to be presented separately on the face of the financial statements. This guidance is intended to increase the prominence of other comprehensive income in financial statements by requiring that such amounts be presented either in a single continuous statement of income and comprehensive income or separately in consecutive statements of income and comprehensive income. The adoption of ASU 2011-05 is not expected to have a material effect on the Company's financial statement or disclosures.

In September 2011, the FASB issued ASU 2011-08, *Testing Goodwill for Impairment* ("ASU 2011-08"), which amends the guidance in ASC 350-20, *Intangibles—Goodwill and Other – Goodwill.* ASU 2011-08 provides entities with the option of performing a qualitative assessment before calculating the fair value of the reporting unit when testing goodwill for impairment. If the fair value of the reporting unit is determined, based on qualitative factors, to be more likely than not less than the carrying amount of the reporting unit, the entities are required to perform a two-step goodwill impairment test. ASU 2011-08 will be effective for us for the fiscal year beginning January 1, 2012. The adoption of ASU 2011-08 is not expected to have a material effect on the Company's financial statements or disclosures.

Business

Our business

Heatwurx, Inc. was incorporated under the laws of the State of Delaware on March 29, 2011 as Heatwurxaq, Inc. and subsequently changed its name to Heatwurx, Inc. on April 15, 2011. Our founders were Larry Griffin and David Eastman, the principals of Hunter Capital Group, LLC, an investment banking entity, which acquired our technology, equipment designs, trademarks, and patent applications from Richard Giles, the inventor in April 2011. In connection with the acquisition, we raised $1,500,000 in senior secured debt and $500,000 through the offering of Series A Preferred Stock to three investors. In October 2011, we completed a 7-1 forward stock split and raised gross proceeds of $3,000,000 through the sale of our Series B Preferred Stock. In August 2012, we raised gross proceeds of $1,520,000 through the sale of our Series C Preferred Stock. In August 2012, the proceeds from the sale of the Series C Preferred Stock were used to repay our secured debt.

We are an Original Equipment Manufacturer of asphalt preservation and repair equipment. Our innovative, and eco-friendly hot-in-place recycling process corrects surface distresses within the top three inches of existing pavement by heating the surface material in excess of 300° Fahrenheit with our electrically powered infrared heating equipment, mechanically loosening the heated material with our processor/tiller attachment that is optimized for producing a seamless repair, and mixing in additional recycled asphalt pavement and a binder (asphalt-cement), and then compacting repaired area with a vibrating roller or compactor. We believe our equipment, technology and processes provide savings over other repair processes that can be more labor and equipment intensive.

AASHTO TIG 2012

The Heatwurx process has been selected by the Technology Implementation Group of the American Association of State Highway Transportation Officials (AASHTO TIG) as an “additionally Selected Technology” for the year 2012.

In its nomination of Heatwurx to AASHTO, the Utah Department of Transportation (“UDOT”) noted that:

- “The state of Utah has used this technology since the end of 2008, 2009, 2010 and expanded the use in 2011. UDOT has written a Warrantee specification for this technology so that we can use it as another tool in our toolbox to do pavement maintenance and pavement preservation at a lesser cost;”
- “The potential value of the benefits is enormous. Reduction in asphalt material needed to repair a flexible pavement (recycling existing material) and increasing the life of the repair from one year to three to five years. Cost savings of 30 to 40% appear very achievable. This technology can be used all year long when other repairs in Utah can only be done in the warmer months;” and
- “UDOT has tried this in the harshest climate, on I-80 in Utah. This route has major truck traffic and gets a lot of snow and plowing. The technology is ready to go and the equipment can be bought through Wheeler and Caterpillar dealers.”

Pothole Patching and Repair

Potholes occur on asphalt-surfaced pavements that are subjected to a broad spectrum of traffic levels, from two-lane rural routes to multi-lane interstate highways. Any agency responsible for asphalt-surfaced pavements eventually performs pothole patching or repair. Pothole patching or repair is generally performed either as an emergency repair under harsh conditions, or as routine maintenance scheduled for warmer and drier periods. Pothole patching and repair can be performed during various weather conditions.

Need for Pothole Patching or Repair

The decision to patch or repair potholes is influenced by many factors:

- The level of traffic
- Location of pothole
- Weather conditions
- Resources
- The tolerance of the traveling public

In most cases, the public likes all potholes to be patched or repaired promptly and forms a negative opinion of the agency when this fails to happen in a timely manner.

Potholes are generally caused by moisture, freeze-thaw cycle, traffic, poor underlying support, or some combination of these factors. Pothole patching or repair is necessary in those situations where potholes compromise safety and cause damage to vehicles.

Traditional pothole patching or repair operations can usually be divided into two distinct periods. The first period is winter repairs, when temperatures are low, base material are frozen, and additional moisture and freeze-thaw cycles are expected before the spring thaw. The second period is spring repairs, when base material is wet and soft, and few additional freeze-thaw cycles are expected.

Examples of Asphalt Repair and Patching Techniques

The following techniques and asphalt repair methods have been documented by the Transportation Research Board as part the Strategic Highway Research Program ("SHRP"). The Federal Highway Association Long Term Pavement Performance ("LTPP") program conducted five years of additional research on pothole repair after the conclusion of SHRP, providing guidelines and recommendations to assist highway maintenance agencies and other related organizations in planning, constructing, and monitoring the performance of pothole repairs in asphalt-surfaced pavements.

Throw-and-Roll

Many maintenance agencies use the "throw-and-roll" method for patching potholes. It is the most commonly used method because of its high rate of production.

The throw-and-roll method consists of the following steps:

1. Shovel the hot asphalt into a pothole (which may or may not be filled with water or debris).
2. Drive over the asphalt using the truck tires to compact.
3. Move on to the next pothole.

One difference between this method and the traditional throw-and-go method is that some effort is made to compact the patches. Compaction provides a tighter patch for traffic than simply leaving loose material. The extra time to compact the patches (generally one to two additional minutes per patch) will not significantly affect productivity. This is especially true if the areas to be patched are separated by long distances and most of the time is spent traveling between potholes.

Crack Sealing

Crack sealing is utilized by agencies, parking lot owners and homeowners to seal cracks in asphalt pavement to prevent water and other debris from penetrating the asphalt and causing further damage during the freeze and thaw cycles. This method is preventative and not suitable for repairing or patching potholes.

The process for sealing cracks consists of the following steps:

1. Clean the surface of the area to be sealed and let dry.
2. Heat the sealing material to 300° to 400° Fahrenheit.
3. Pour the heated material into the crack.
4. Let cool and dry.
5. Place a layer of sand over the sealing material to prevent tracking by vehicle tires.

Spray injection Patching

The spray injection repair technique is performed by spraying heated aggregate (minerals such as sand, grave, or crushed stone) into the area to be repaired. This repair method requires a truck to haul the replacement asphalt and specialized machinery to heat and disperse.

The spray-injection procedure consists of the following steps:

1. Blow water and debris from the pothole with a high-pressure air blower.
2. Spray a generous layer of binder (asphalt-cement) on the sides and bottom of the pothole.
3. Blow heated aggregate (minerals such as sand, gravel or crushed stone) and asphalt-cement (binder) into the pothole.
4. Cover the patched area with a layer of dry aggregate (minerals).

This procedure process does not include compaction of the repaired area.

Semi-Permanent Repair (Saw cut)

Many agencies employ semi-permanent repair methods such as saw cutting. This method represents an increased level of effort for repairing potholes. This increased effort increases the performance of the repair by improving the underlying and surrounding support provided for the repair. It also raises the cost, due to the increased labor required and the amount of time the repair takes.

The semi-permanent repair method has traditionally been considered one of the best for repairing potholes, short of full-depth removal and replacement. This procedure includes the following steps:

1. Remove water and debris from the pothole.
2. Using a radial saw with a hardened blade, cut the repair area on four sides creating a square or rectangle.
3. Remove the material inside the section that was cut.
4. Shovel hot asphalt into the repair area. Spread with an asphalt rake to proper grade.
5. Compact with a vibrating drum roller or vibrating plate compactor.

This repair procedure results in a tightly compacted repair. However, it requires more workers and equipment and has a lower productivity rate than both the throw-and-roll and the spray-injection procedure.

Infrared Heating Technology

The infrared method utilized by Heatwurx consists of the following steps:

1. Place infrared heating equipment on area to be repaired and heat until asphalt roadway reaches a temperature of 300° Fahrenheit through the full depth of the section. Overlap infrared equipment onto existing asphalt a minimum of 12 inches to enable seamless repair.
2. Using a skid steer (compact loader), remove heater and move to the next section to be repaired for heating.
3. Add recycled asphalt pavement as needed to provide proper volume and grade within the treated area.
4. Using the skid steer, attach the asphalt processor and dig up the heated area.
5. Apply binder (asphalt-cement) to the asphalt in the repair area.
6. Repeat the processing until the material is thoroughly mixed.
7. Using the screed (winged spreader) on the processor attachment, spread the asphalt to proper grade in preparation for compaction.
8. Use asphalt rake to remove excess material and square up the sides.
9. Compact treated area with a double wheel vibrating steel drum roller when treated area reaches a temperature range of 150° to 200° Fahrenheit.

Heatwurx Products

Heatwurx HWX-30 – Electrically Powered Infrared Heater

The HEATWURX™ HWX-30 Electric Infrared Heater is designed to effectively heat asphalt pavement to a pliable 300° Fahrenheit without scorching, burning, or oxidizing the existing asphalt. The HWX-30 is easily attached to a skid steer with standard quick releases and is a self-contained mobile infrared heater that can be used to repair/rejuvenate asphalt damaged by potholes and cracking. The HEATWURX™ HWX-30 Electric Infrared Heater specifications are as follows:

- Weight 3,550 lbs. (with generator mounted)
- Heats repair area of 30 square feet
- Generator requirement 45 kilowatts
- Custom industrial heating elements
- Cycle times 20 – 40 minutes depending on depth and weather conditions
- Fuel consumption approximately 2.8 gallons of fuel per hour
- Heavy duty steel constructed frame
- Top wind 7,000 lbs. jacks
- Six inches of heat resistance insulation
- Heavy duty high temperature powder coated finish for maximum durability and visibility
- Heavy duty steel attachment plate for skid steers or forklifts

Heatwurx AP-40 – Asphalt processor

The HEATWURX™ HWX-AP40 Asphalt Processor is powered by an orbital hydraulic motor and has a 40 inch working width. Designed to process and rejuvenate existing asphalt in place, it processes, remixes, and levels the heated, rejuvenated asphalt to the desired depth, ready for compaction. It is designed to easily attach to a skid steer and has custom beveled tines to provide a seamless bond between the repaired area and existing pavement**.** The HEATWURX™ HWX-AP40 Asphalt Processor specifications are as follows:

- One inch wear plate with ability to adjust to desired depth
- Orbital hydraulic motor
- 40” working width
- 5/16 inch processing blades
- Custom beveled cutting blades tooling to maximize asphalt bonding
- 12 gauge wings to funnel material into desired location

Sources and Availability of Raw Materials

The primary raw material that is used in manufacturing our equipment is steel. We currently outsource our manufacturing to a contract manufacturer who procures all raw materials and components. See “**Risk Factors**” for a discussion on the risk related to having a single manufacturer of equipment.

Potential Markets and Major Customers

The potential customers of our equipment are federal, state, and local governments, the military, contractors, commercial real estate owners, home owner associations, and parking lot owners. We do not intend to sell directly into any of these markets but instead intend to rely on distribution agreements with other companies that are well-positioned in these markets or for entry into these markets. At this time, we do not have any major customers and are focused on building our relationships with distributors, and promoting our equipment and processes with governmental agencies and other potential customers.

Intellectual Property

We currently have two U.S. patent applications pending. Our first patent application, entitled "Infrared Heating System and Method for Heating Surfaces" and filed in 2009, is currently in the examination process after having been rejected by the U.S. Patent Office. We have responded to the Rejections and continue to seek approval of this patent application from the U.S. Patent Office. Our second patent application, entitled "Asphalt Repair System and Method" and filed in 2010, is currently in the early stages of the substantive examination process by the U.S. Patent Office. We intend to develop other patentable technologies, but do not have any assurance that our current patent applications will be issued or that we will be able to develop future patentable technologies. We believe our ability to operate our business is not dependent on the patentability of our technology.

Governmental Regulation

We do not manufacture our own equipment nor do we utilize our own equipment to perform road repair. It will up to the manufacturer as well as the end-users to comply with any governmental regulations. To the extent that any regulations require changes to our equipment, we will have to comply or risk losing the customers. See "**Risk Factors**" for a discussion relating to compliance with government regulations. **Research and Development**

We intend to use $300,000 from the proceeds of this offering on further research and development. See "**Use of Proceeds**" and "**Management's Discussion and Analysis or Plan of Operations**"

Employees

As of September 30, 2012, we had six employees, all of which were full-time employees.

Competition

According to the 2011 IBIS World Report on US Road and Highway Maintenance, the total spent on road maintenance in the United States is in excess of $30 billion per year. As an emerging company, we are at a competitive disadvantage because we do not have the financial resources of larger, more established competitors, nor do we have a sales force large enough to challenge our competitors. We intend to address this disadvantage by entering into distribution agreements with larger companies, and providing education and training to our sales partners, customers, and governmental agencies. We also believe that our equipment and processes are better than what is offered by other companies, and that purchasers will choose our equipment because of its effectiveness, quality of design, reputation in the marketplace, as well as the recognition we have received from state and federal agencies. We intend to offer an industry standard one-year limited warranty and provide nationwide service though our OEM partners and dealers. See "**Risk Factors**" for a discussion of the risks associated with our company.

Facilities

The Company's executive offices are located at 6041 South Syracuse Way, Suite 315, Greenwood Village, Colorado 80111. The one year lease for these facilities expires in August 2013. All manufacturing and storage of products is performed by contractors.

Directors, Executive Officers, Promoters and Control Persons

Our directors and executive officers are:

Name	Age	Positions
Stephen Garland	45	Chief Executive Officer, President and Interim Chairman
Allen Dodge	44	Chief Financial Officer
Gus Blass III	60	Director
Reginald Greenslade	49	Director
Donald Larson	74	Director

Stephen Garland. Stephen Garland has served as the President and Chief Executive Officer of Heatwurx, Inc. since January 2012, a Director since November 2011, and a consultant and interim Chief Executive Officer to the Company from October 2011 until December 31, 2011. From 2007 to present, Mr. Garland is the Managing Director of Sugarland Consulting, an executive management-consulting firm focused on the private equity and venture capital sector. Mr. Garland received a BA in liberal arts from Colorado State University, a Master of Science in Management from University of Denver, and Master of Global Management from Thunderbird School of Global Management. We believe that Mr. Garland's consulting background and experience with a variety of companies and his strong educational background give him the skills and expertise to serve as a director of our company.

Allen Dodge. Allen Dodge has served as our Chief Financial Officer since August 2012. From July 2006 through July 2012, Mr. Dodge was the Executive Vice President/Chief Financial Officer of Health Grades, Inc., a leading provider of comprehensive information about physicians and hospitals. Mr. Dodge received a BA in business economics from UC Santa Barbara and is a certified public accountant.

Gus Blass III. Mr. Blass has been a director since August 2012. He has been a General Partner of Capital Properties LLC since 1981. Capital Properties owns and manages over one million square feet of warehouse space in the Little Rock, Arkansas area and invests in public and private companies. He has also been a Principal of Falcon Securities since 1984. Mr. Blass also serves on the board of directors at BancorpSouth and Black Raven Energy, both from 2007 to date. Mr. Blass has a Bachelor of Science Degree in Finance and Banking from the University of Arkansas. We believe that Mr. Blass's financial and business expertise, including a diversified background of managing and directing public and private companies with substantial real property and serving on other boards of directors, give him the qualifications and skills to serve as a director and as the chairman of our audit committee.

Reginald Greenslade. Mr. Greenslade has been a director since September 2012. He has also been a director of Tuscany International Drilling Inc., a Canadian-based oilfield services company, from October 2007 to present, President of Tuscany International Drilling Inc. from April 2010 and President and Chief Executive Officer from June 2011 to present. Mr. Greenslade has also served as a director Spartan Oil Corp from June 2011 to present and a director of Spartan Exploration Ltd. from January 2010 to June 2011. Mr. Greenslade has served as an officer and/or director of both public and private companies during his career. We believe that his prior experience gives him the qualification and skills to serve as a director and as chairman of our nominating committee.

Donald Larson. Mr. Larson has been a director since November 2011. Mr. Larson is Chairman and Chief Executive Officer of W. D. Larson Companies LTD., Inc. (Larson Companies). Larson Companies with its affiliates is the second largest Peterbilt dealer group in North America operating in Minnesota, Wisconsin, North Dakota, South Dakota and Ohio. Mr. Larson opened his first Peterbilt dealership in South St. Paul, MN in 1971 and,

through internal growth and acquisitions, has expanded to 16 locations employing more than 500 persons. Mr. Larson also owns and is Chairman and Chief Executive Officer of Citi-Cargo & Storage Co., Inc., a provider of business storage and transportation solutions, including contract public warehousing and distribution services throughout the Midwestern United States. We believe that Mr. Larson's experience in building up the Larson companies and overseeing over 500 employees provides him ample experience to serve as a director of our company and chairman of our compensation committee.

Board of Directors

Our Board of Directors is comprised of four directors. Our directors serve one-year terms, or until an earlier resignation, death or removal, or their successors are elected. There are no family relationships among any of our directors or officers.

Other than fees paid to the Chairman of the Board of Directors, directors do not receive cash compensation for service on the Board of Directors. We reimburse our directors for their out-of-pocket costs, including travel and accommodations, relating to their attendance at any Board of Directors meeting. Directors are entitled to participate in our equity compensation plan. Upon their election to the Board of Directors, directors receive options to purchase 75,000 shares of common stock.

Director Compensation

The following table provides a summary of annual compensation for our Directors for the period from March 29, 2011 to December 31, 2011:

Name	Option awards	All other compensation	Total
Stephen Garland (1)	$ 72,816	$ 20,000	$ 92,816
Richard Giles (2)	-	$ 53,600	$ 53,600
Charles Kirby (3)	$ 36,878	-	$ 36,878
John McGrain (4)	$ 36,878	-	$ 36,878
Hugh Wolff (5)	$ 72,816	$16,000	$ 88,816
Justin Yorke (6)	$ 73,755	-	$ 73,755

(6) Mr. Garland received 75,000 common stock options as compensation for services as a director and a $20,000 consulting fee, unrelated to his service as a Director, during this period.

(2) Mr. Giles resigned as a director in June 2012. Option awards do not include 1,400,000 options Mr. Giles received in conjunction with his sale of the Heatwurx process to the Company. He received $53,600 in consulting fees, unrelated to his service as a Director, during this period.

(3) Mr. Kirby was issued 37,500 common stock options during the period. He resigned as a director in October 2011.

(4) Mr. McGrain was issued 37,500 common stock options during the period. He resigned as a director in October 2011.

(5) Mr. Wolf was issued 75,000 common stock options during the period. He received $16,000 in fees for his position as Chairman of the Board of Directors during this period. He resigned as a director in June 2012.

(6) Mr. Yorke was issued 75,000 common stock options during the period. He resigned as a director in June 2012.

Committees of the Board of Directors

The charters of each of the following committees are available in print, free of charge, to any investor who requests it by writing to: 6041 South Syracuse Way, Suite 315, Greenwood Village, Colorado 80111.

Audit committee

Our audit committee consists of Mr. Blass, committee chairman and designated audit committee financial expert, and Messrs. Greenslade and Larson. All members of our audit committee meet the independence standards for directors as set forth in the NYSE MKT Exchange Rules. The audit committee reviews in detail and recommends approval by the full Board of Directors of our annual and quarterly financial statements, recommends approval of the remuneration of our auditors to the full board, reviews the scope of the audit procedures and the final audit report with the auditors, and reviews our overall accounting practices and procedures and internal controls with the auditors.

Compensation committee

Our compensation committee consists of Mr. Larson, committee chairman, and Messrs. Blass and Greenslade, all of whom are independent directors under the NYSE MKT Exchange Rules. The compensation committee reviews and approves annually the compensation of the Chief Executive Officer, provides recommendations annually to full Board of Directors regarding the compensation to other executive officers, and makes recommendations to the Board's regarding other compensation issues.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee consists of Mr. Greenslade, committee chairman, and Messrs. Blass and Larson. The nominating and corporate governance committee determines the qualifications, qualities, skills, and other expertise required to be a director and develops criteria that it recommends to the full Board of Directors. The nominating and corporate governance committee also develops and recommends to the full Board of Directors a set of corporate governance guidelines applicable to us, including our certificate of incorporation and bylaws.

Code of Ethics and Business Conduct

We adopted a Code of Ethics and Business Conduct in October 2012, which applies to all of our employees, officers and directors. It establishes standards of conduct for individuals and also individual standards of business conduct and ethics. We will provide such Code of Ethics and Business Conduct in print, free of charge, to any investor who requests it by writing to: 6041 South Syracuse Way, Suite 315, Greenwood Village, Colorado 80111.

Executive compensation

Summary Compensation Table

The following table provides a summary of annual compensation for our executive officers for the period from incorporation on March 29, 2011 to December 31, 2011. We do not have an employment agreement with either of our executive officers, who are referred to as our named executive officers.

Name and principal position	Salary	Option Awards ($)	All other compen-sation	Total
Steve Garland – Interim Chief Executive Officer (1) (2)	$ -	$ 72,816	$ 20,000	$ 92,816
Larry Griffin – President and Chief Executive Officer (3) (4)	$ 81,250		$ 10,000	$ 91,250

(4) Mr. Garland served as our interim Chief Executive Officer from November 2011 until December 31, 2011. His monthly compensation was $10,000 per month.

(2) Mr. Garland received the options upon acceptance of his position on our company's Board of Directors in November 2011. The options have an exercise price of $2.00 per share, which was the offering price of our Series B Preferred Stock in October 2011.

(3) Mr. Griffin served as our President and Chief Executive Officer from April 2011 to November 2011. His annual base salary was $150,000.

(4) Mr. Griffin received $10,000 principally as compensation for accrued but unused vacation.

Outstanding Equity Awards at Fiscal Year-End

The following table provides information about outstanding stock options held by our named executive officers at December 31, 2011. No other named executive received stock or stock options. All of these options were granted under our 2011 Stock Incentive Plan. Our named executive officers did not hold any restricted stock or other stock awards at the end of 2011.

Name	Number of Shares underlying Unexercised Options		
	Exercisable	Option Exercise Price	Option Expiration Date
Steve Garland	75,000	$2.00	11/5/16

Equity compensation plan

Our Board of Directors and stockholders approved the Amended and Restated Heatwurx, Inc. 2011 Equity Incentive Plan (the "**Plan**") in October 2012.

Eligibility. Employees, non-employee directors, advisors, and consultants of the Company and its affiliates are eligible to receive grants under the Plan.

Shares Available. In October 2012, the Board of Directors and stockholders increased the number of shares of common stock reserved for issuance under the Plan to a total of 1,800,000 shares. There are currently 1,022,000 outstanding option grants to officers, directors, employees and consultants under the Plan. If unexercised options

expire or are terminated, the underlying shares will again become available for grants under the Plan.

Grants under the Plan. The Plan provides for the grant of options to purchase shares of common stock of the Company. Options may be incentive stock options, designed to satisfy the requirements of Section 422 of the U.S. Internal Revenue Code, or non-statutory stock options, which do not meet those requirements. Incentive stock options may only be granted to employees of the Company and its affiliates. Non-statutory stock options may be granted to employees, non-employee directors, advisors, and consultants of Company and its affiliates.

Outstanding Options. All currently outstanding options are exercisable at a price per share of $2.00, which was the offering price for our Series B and Series C Preferred Stock at the time of the grant of those options, and expire five years from the date of issuance. Options issued to directors are fully vested upon grant. Except as otherwise specified at the time of grant, all other options vest over a period of four years.

Administration of the Plan. The Plan provides that it will be administered by the Board or a Committee designated by the Board. Our Board of Directors appointed a Compensation Committee, which administers the Plan. The Compensation Committee has complete discretion to:

- determine who should receive an option;
- determine the type, the number shares, vesting requirements and other terms and conditions of options;
- interpret the Plan and options granted under the Plan; and
- make all other decisions relating to the operation and administration of the Plan and the options granted under the Plan.

Terms of Options. The exercise price for non-statutory and incentive stock options granted under the equity compensation plan may not be less than 100% of the fair market value of the common stock on the option grant date or 110% in the case of incentive stock options granted to employees who own stock representing more than 10% of the voting power of all classes of common stock of the Company and its parent and subsidiaries ("**10%-Stockholders**"). The Compensation Committee has the authority to establishing the vesting, including the terms under which vesting may be accelerated, and other terms and conditions of the options granted. Options can have a term of no more than ten years from the grant date except for incentive stock options granted to 10%-Stockholders which can have a term of no more than five years from the grant date.

The Plan authorizes the Compensation Committee to provide for accelerated vesting of options upon a "Change in Control," as defined in the Plan. All of the options currently outstanding provide that if there is a Change in Control, (i) immediately prior to the effective date of the Change in Control, an unvested award will become fully exercisable as to all shares subject to the award and (ii) unless the option is assumed by a successor corporation or parent thereof, immediately following the Change in Control any unexercised options will terminate and cease to be outstanding. A Change in Control includes:

- any Person (as such term is used in Sections 13(b) and 14(b) of the 1934 Act) is or becomes the beneficial owner ("**Beneficial Owner**") (as defined in Rule 13d-3 promulgated under the 1934 Act), directly or indirectly, of securities representing fifty percent (50%) or more of the combined voting power of the Company's securities that are then outstanding; provided, however, that an initial public offering shall not constitute a Change in Control for purposes of the Plan;
- a merger or consolidation after which the Company's then current stockholders own less than 50% of the surviving corporation; or
- a sale of all or substantially all of the Company's assets.

Amendment and Termination. The Board of Directors may amend or terminate the Plan and outstanding options at any time without the consent of option holders provided that such action does not adversely affect outstanding options. Amendments are subject to stockholder approval to the extent required by applicable laws and regulations. Unless terminated sooner, the Plan will automatically terminate on April 15, 2021, the tenth anniversary of April 15, 2011, the date the Plan was adopted by our Board of Directors and approved by our Stockholders.

The table below provides information as to the number of options outstanding and their weighted average exercise price at November 10, 2012.

Equity compensation plan information as of November 10, 2012

Plan category	Number of securities to be issued upon exercise of outstanding options	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plan	1,022,000 (1)	$2.00	478,000

(1) Excludes 1,440,000 performance options that were not issued under the equity compensation plan.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information regarding beneficial ownership of our common stock as of November 10, 2012, by:

- each of our executive officers and directors;
- all executive officers and directors as a group; and
- each person who is known by us to beneficially own more than 5% of our outstanding common stock.

Shares of common stock not outstanding but deemed beneficially owned because an individual has the right to acquire the shares of common stock within 60 days, including shares issuable upon conversion of preferred stock, are treated as outstanding when determining the amount and percentage of common stock owned by that individual and by all directors and executive officers as a group. The address of each executive officer and director is 6041 South Syracuse Way, Suite 315, Greenwood Village, Colorado 80111. The address of other beneficial owners is set forth below.

The percentage of shares beneficially owned before the offering shown in the table is based upon 8,360,000 shares of common stock outstanding as of November 10, 2012, after giving effect to the conversion of all of our outstanding preferred stock into 6,460,000 shares of common stock, which will occur automatically upon completion of this offering. The information relating to numbers and percentages of shares beneficially owned after the offering gives effect to the issuance of shares of common stock in this offering. Except as set forth in footnote (8) to the table below, the percentage ownership information assumes no exercise of the underwriter's over-allotment option.

Name of beneficial owner	Shares beneficially owned prior to initial public offering	Shares beneficially owned after initial public offering	Percentage of shares outstanding	
			Prior to initial public offering	After initial public offering
Executive officers and directors:				
Stephen Garland (1)	375,000	375,000	4.29%	3.66%
Allen Dodge (2)	-	-	-	-
Gus Blass III (3)	356,130	356,130	4.22%	3.58%
Reginald Greenslade (4)	181,065	181,065	2.15%	1.82%
Donald Larson (5)	150,000	150,000	1.78%	1.51%
All executive officers and directors as a group (5 persons)	1,062,195	1,062,195	12.71%	10.77%
Stockholders owning more than 5%:				
JMW Fund LLC 4 Richland Place Pasadena, California 91103 Manager: Justin Yorke (6)	1,575,000	1,575,000	18.84%	15.97%
San Gabriel Fund LLC 4 Richland Place Pasadena, California 91103 Manager: Justin Yorke (6)	1,575,000	1,575,000	18.84%	15.97%

Kirby Enterprise Fund LLC (7) PO Box 3087 Greenwood Village, Colorado 80155 Manager: Charles Kirby	605,000	605,000	7.24%	6.14%
Charles F. Kirby Roth IRA (7) PO Box 3087 Greenwood Village, Colorado 80155	482,000	482,000	5.77%	4.89%
Richard Giles (8) 6300 Sagewood Dr. Suite 400 Park City, Utah 84098	1,417,500	1,117,500	16.90%	11.30%

(1) Consists of 375,000 shares of common stock issuable upon exercise of vested stock options.

(2) Does not include 100,000 shares of common stock issuable upon exercise of unvested stock options.

(3) Gus Blass III may be deemed to be the beneficial owner of securities held by a fund which owns 50,000 shares of common stock and 75,065 shares of Series B Preferred Stock, due to his position as manager of the fund. As a result, when including Mr. Blass's personal stock holdings of 231,065 shares of common stock, consisting of 50,000 shares of common stock, 75,065 shares of common stock issuable upon conversion of Series B Preferred Stock, and 31,000 shares of common stock issuable upon conversion of Series C Preferred Stock and 75,000 shares of common stock underlying vested stock options, he may be deemed to own beneficially 356,130 shares of common stock, or approximately 4.22% and 3.58% of our common stock prior to and after this offering, respectively.

(4) Includes 75,000 shares of common stock underlying vested stock options, 75,065 shares of common stock issuable upon conversion of Series B Preferred Stock, and 31,000 shares of common stock issuable upon conversion of Series C Preferred Stock.

(5) Includes 75,000 shares of common stock underlying vested stock options and 75,000 shares of common stock.

(6) Justin Yorke may be deemed to be the beneficial owner of securities held by JMW Fund LLC and of San Gabriel Fund LLC due to his position as manager of both funds. He is also the manager of funds owning an aggregate of 125,500 shares of Series C Preferred Stock. As a result, when including Mr. Yorke's personal stock holdings of 87,495 shares of common stock, he may be deemed to own beneficially 3,362,994 shares of common stock, or approximately 40.23% and 34.11% of our common stock prior to and after this offering, respectively.

(7) Charles Kirby is the beneficial owner of the Charles F. Kirby Roth IRA and may be deemed to be the beneficial owner of Kirby Enterprise Fund LLC due to his position as manager. He is also the manager of funds owning an aggregate of 30,000 shares of Series B Preferred Stock. As a result, when including Mr. Kirby's personal stock holdings of 37,500 shares of common stock , he may be deemed to own beneficially 1,117,000 shares of common stock, or approximately 13.36% and 11.33% of our common stock prior to and after this offering, respectively.

(8) Includes 30,000 shares of common stock underlying vested stock options and 1,387,500 shares of common stock. Excludes 10,000 unvested performance stock options and 1,400,000 unvested performance stock options which vest based on meeting certain future revenue goals. Assumes the full exercise of our Underwriter's overallotment option and the sale of 300,000 shares to cover the 200,000 units to be sold by the Underwriter pursuant to the overallotment option.

Certain Relationships and Related Transactions

Transactions with Related Persons, Promoters and Certain Control Persons

This section describes the transactions we have engaged in with persons who were our directors or officers at the time of the transaction, and persons or entities known by us to be the beneficial owners of more than 5% of our common stock since our incorporation on March 29, 2011.

Transactions with Hunter Capital LLC

Larry Griffin, the former Chief Executive Officer of Heatwurx, was also an executive officer of Hunter Capital LLC. The Company leased office space and reimbursed Hunter Capital for its share of other related office expenses for the period from inception through December 31, 2011. Hunter Capital was compensated a total of $39,226 during that period.

Transactions with Richard Giles

Mr. Giles owns more than 5% of the outstanding shares of Company common stock. Mr. Giles was a director of the Company from April 2011 to June 2012 and has been a consultant of the Company from April 2011 to the present. His compensation as a consultant from April 2011 through September 30, 2012 was $145,600. He continues to be paid $15,000 a month for his consulting services.

Conflicts of Interest Policies

We have adopted a Code of Ethics and Business Conduct. All our directors, officers, and employees are required to be familiar with the Code of Ethics and comply with its provisions. The Code of Ethics expressly prohibits loans made by the Company to our directors and executive officers. Any other transaction involving an executive officer or director that may create a conflict of interest must receive the prior approval of the Audit Committee. All other conflicts must be reported to the Chief Financial Officer. The Code of Ethics provides that conflicts of interest should be avoided but allows the Audit Committee to approve transactions with executive officers or directors other than loans or guaranty transactions.

Other than as described in this section, there are no material relationships between us and any of our directors, executive officers, or known holders of more than 5% of our common stock.

Description of Securities

The following is a description of our capital stock and certain provisions of our certificate of incorporation, our bylaws as well as certain provisions of applicable law. Other than the ability to issue preferred stock without stockholder authorization or approval as discussed below, we have no charter or bylaw provisions that would prevent or delay a change in control, or discourage potential bidders

General

We are authorized to issue 23,000,000 shares of capital stock, $0.0001 par value per share, consisting of 20,000,000 shares of common stock and 3,000,000 shares of preferred stock. We have designated and issued 600,000, 1,500,000, and 760,000 shares of Series A, B and C Preferred Stock, respectively, in separate private placements.

We have applied to list our common stock and $5.00 warrants on the NYSE MKT Exchange under the proposed symbols of "____" and "_____," respectively. We cannot assure you, however, that an active or orderly trading market will develop for our common stock and warrants or that our common stock and warrants will trade in the public markets subsequent to this offering at or above the initial offering price.

The following is a summary of the rights associated with our common stock and preferred stock.

Common stock

As of November 10, 2012, we had 16 stockholders of record owning a total of 1,900,000 shares of common stock. In addition, we had:

- 6,460,000 shares of common stock reserved and subject to issuance upon conversion of preferred stock;
- 1,525,000 shares of common stock reserved for issuance pursuant to the unit offering registered hereby;
- 937,500 shares of common stock reserved for issuance pursuant to the exercise of warrants issuable under the unit offering registered hereby (including 150,000 warrants issued to our Underwriter in connection with this offering); and
- 2,462,000 shares of common stock reserved and subject to issuance upon exercise of 1,022,000 outstanding stock options and 1,440,000 outstanding performance stock options.

Our Certificate of Incorporation does not provide for cumulative voting and the holders of our common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. Our preferred stockholders are entitled to cast the number of votes equal to the number of whole shares of common stock which they are convertible into. The holders of our common stock are entitled to receive ratably such common stock dividends, if any, as may be declared from time to time by the Board of Directors out of funds legally available for that purpose. In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding. A merger, conversion, exchange or consolidation of us with or into any other person or sale or transfer of all or any part of our assets (which does not in fact result in our liquidation and distribution of assets) will not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of our affairs. The holders of our common stock have no preemptive or conversion rights.

All outstanding shares of common stock and all shares of common stock when issued by us will be fully paid and nonassessable. Our board is authorized to issue additional shares of common stock within the limits authorized by our Certificate of Incorporation without stockholder approval.

Preferred stock

Our certificate of incorporation authorizes the issuance of up to 3,000,000 shares of preferred stock in one or more series. To date we have issued a total of 2,860,000 shares of preferred stock in series A, B and C as detailed below. Any further issuance will require amendment of our certificate of incorporation and stockholder approval.

Series A Preferred Stock. As of November 10, 2012, there were 600,000 shares of Series A Preferred Stock outstanding.

The Series A Preferred Stock has the following terms:

- annual dividend of $0.066664 cumulative dividend per share;
- dividends accrue but are not payable unless declared by the Board of Directors or unless dividends are to be paid on common stock;
- liquidation preference of $0.8333 per share with priority over common stock;
- convertible into common stock at $0.119047 per share for a total of 4,200,000 shares;
- voting rights equal to common stock on an as-converted basis, and
- automatically converts to 4,200,000 shares of common stock upon the closing of this offering.

Series B Preferred Stock. As of November 10, 2012, there were 1,500,000 shares of Series B Preferred Stock outstanding.

The Series B Preferred Stock has the following terms:

- annual dividend of $0.16 cumulative dividend per share;
- dividends accrue but are not payable unless declared by the Board of Directors or unless dividends are to be paid on common stock;
- liquidation preference of $2.00 per share with priority over common stock;
- convertible into common stock at $2.00 per share for a total of 1,500,000 shares;
- voting rights equal to common stock on an as-converted basis; and
- automatically converts to 1,500,000 shares of common stock upon the closing of this offering.

Series C Preferred Stock. As of November 10, 2012, there were 760,000 shares of Series C Preferred Stock outstanding.

The Series C Preferred Stock has the following terms:

- annual dividend of $0.16 cumulative dividend per share accrues and is payable quarterly;
- liquidation preference of $2.00 per share with priority over common stock;
- convertible into common stock at $2.00 per share for a total of 760,000 shares;
- voting rights equal to common stock on an as-converted basis; and
- automatically converts to 760,000 shares of common stock upon the closing of this offering.

Common stock purchase warrants

$5.00 warrants. Up to 862,500 warrants to purchase one share of common stock at $5.00 per share, including 112,500 warrants subject to our Underwriter exercising its overallotment option, are issuable upon the purchase of units in this offering and are being registered by this prospectus. The warrants expire one year from the date of issuance. The Underwriter's overallotment option provides for the issuance of 112,500 warrants, 100,000 of which will be backed by the common stock held by a selling stockholder. The proceeds from the exercise of the outstanding warrants will first go to the Company. After the Company has issued 762,500 shares of common stock in connection with the exercise of warrants, any additional proceeds will go to the selling stockholder.

Underwriter's warrants. We have agreed to issue to our Underwriter at the closing of this offering, for nominal consideration, warrants to purchase 150,000 shares of common stock. These warrants will be exercisable for a four year period commencing on the first anniversary of the closing date of this offering at an exercise price of $6.00 per share. These warrants will be restricted from sale, transfer, assignment or hypothecation for a period of one year from the closing of this offering, except to officers of our Underwriter and broker-dealers participating in this offering and their officers and partners, and except transfers by operation of law or by reason of our reorganization.

Indemnification of directors and officers

Our Certificate of Incorporation and bylaws provide that we will indemnify our directors and officers to the maximum extent permitted by Delaware law, including in circumstances in which indemnification is otherwise discretionary under Delaware law. We have agreed to indemnify our executive officers and directors for all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by them in respect of any civil, criminal or administrative action or proceeding to which they are made a party by reason of being or having been a director or officer, if (a) they acted honestly and in good faith with a view to our best interests, and (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, they had reasonable grounds for believing that their conduct was lawful.

These indemnification provisions may be sufficiently broad to permit indemnification of our directors, officers and controlling persons for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended. To the extent that our directors, officers and controlling persons are indemnified under the provisions contained in our certificate of incorporation, bylaws, Delaware law or contractual arrangements against liabilities arising under the Securities Act, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Transfer agent and registrar

The transfer agent and registrar for our common stock and warrants is Corporate Stock Transfer, Inc., Denver, Colorado.

Shares eligible for future sale

Prior to this offering, there has been no public market for any of our securities. Future sales of substantial amounts of common stock and warrants in the public market, or the perception that such sales may occur, could adversely affect the market prices of our common stock and warrants.

We are registering in this prospectus 1,725,000 shares of common stock, 862,500 warrants to purchase common stock at $5.00 per share, and 862,500 shares of common stock underlying the warrants to purchase common stock.

By separate prospectus we are also registering:

- 6,460,000 shares of common stock underlying our Series A, B and C Preferred Stock; and
- 1,450,000 shares of common stock.

Accordingly, up to 2,587,500 shares of common stock being sold under this prospectus (including 862,500 shares of common stock issuable upon exercise of common stock warrants) and up to 8,360,000 shares of our common stock, including 6,460,000 issuable under conversion of our Series A, B and C Preferred Stock, will be free trading and may be sold at any time, except as limited by lockup agreements with our Underwriter as discussed below.

In addition to the shares being registered in this offering, we have issued our Underwriter 150,000 warrants in connection with this offering. The warrants are exercisable beginning one year after the close of this offering and the underlying 150,000 common shares issuable upon exercise will be available for future sale.

Stock options

We intend to file a registration statement on Form S-8 under the Securities Act to register shares of common stock issuable under our equity compensation plan. At November 10, 2012 there were 1,022,000 stock options outstanding under the plan to purchase an equal number of shares of common stock at $2.00 per share. At November 10, 2012 there were an additional 1,440,000 nonqualified performance stock options outstanding that were not issued under our equity compensation plan.

The registration statement on Form S-8 is expected to be filed not sooner than 90 days following the effective date of the registration statement of which this prospectus is a part and will be effective upon filing. Shares issued upon the exercise of stock options after the effective date of the Form S-8 registration statement will be eligible for resale in the public market without restriction, subject to limitations applicable to affiliates under Rule 144 of the Securities Act.

Lockup agreements

Our officers, directors and a selling stockholder who beneficially own 2,479,695 shares of common stock, including 630,000 shares of common stock issuable pursuant to vested stock options, and 287,195 shares issuable upon conversion of Series A, B and C Preferred Stock, have agreed with our Underwriter not to sell their shares of

common stock for 13 months from the effective date of the registration statement of which this prospectus is a part without the written consent of our Underwriter.

Underwriting

Subject to the terms and conditions of an underwriting agreement, Gilford Securities Incorporated has agreed to purchase 1,500,000 units from us at a price of $5.10 per unit. Each unit consists of one share of common stock and one half (1/2) common stock purchase warrant which may be exercised to purchase one share of our common stock at $5.00 per share for a period of one year. The underwriting agreement will provide that our Underwriter is committed to purchase all units offered in this offering, other than those covered by the over-allotment option described below. The resale by our stockholders of up to 6,460,000 shares of our common stock issuable upon conversion of Series A, B and C Preferred Stock and 1,450,000 shares of our common stock, will not be offered for sale through our Underwriter but will be registered pursuant to a separate prospectus covering such securities being filed with the SEC simultaneously with the filing of the registration statement of which this prospectus is a part. In the underwriting agreement, our Underwriter's obligations are subject to approval of certain legal matters by its counsel, including, without limitation, the authorization and validity of the shares, and of various other customary conditions, representations and warranties contained in the underwriting agreement, such as receipt by our Underwriter of officers' certificates and legal opinions of our counsel.

We have granted to the Underwriter an option, exercisable for 45 days from the date of this prospectus, to purchase up to 225,000 additional units at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The Underwriter may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the units offered by this prospectus. Of the 225,000 units, 200,000 are being sold by the selling stockholder. If our Underwriter exercises its over-allotment option, the first 25,000 units will be units sold to the Underwriter by the Company, and the remaining 200,000 will be units sold to the Underwriter by the selling stockholder.

Commissions and discounts

The following table sets forth the public offering price and underwriting discount to be paid by us to our Underwriter and the proceeds, before expenses, to us. This information assumes either no exercise or full exercise by our Underwriter of its over-allotment option.

	Per unit	Without option exercise (1)	With option exercise
Public offering price	$5.10	$7,650,000	$7,777,500
Discount	$0.408	$612,000	$622,200
Non- accountable expense allowance (2)	$0.153	$229,500	$233,325
Proceeds before expenses (3)	$4.539	$6,808,500	$6,921,975

(1) We have granted our Underwriter an option, exercisable for 45 days after the date of this prospectus, to purchase a number of units equal to 15% of the number of units sold in this offering by us solely to cover over-allotments, if any, at the same price as the initial units offered.

(2) We have agreed to pay our Underwriter a non-accountable expense allowance of 3% of the gross proceeds of the proposed offering, including shares sold on exercise of the over-allotment option. We will not receive proceeds from the sale of 200,000 units offered by a selling stockholder and the selling stockholder is responsible for the Underwriter discount and non-accountable expense allowance resulting from the sale of those units. We have paid our Underwriter $25,000 as an advance against this non-accountable expense allowance.

(3) We estimate that the expenses of this offering payable by us, not including underwriting discounts and commissions and non-accountable expense allowance will be approximately $258,500.

Warrants

We have agreed to issue to our Underwriter at the closing of this offering, for nominal consideration, warrants to purchase 150,000 shares of common stock. These warrants will be exercisable for a period of 48 months commencing on the first anniversary of the closing date of this offering at an exercise price equal to 120% of the price of our common stock offered by this prospectus, or $6.00 per share. These warrants will be restricted from sale, transfer, assignment or hypothecation for a period of 12 months from the closing of this offering, except to officers of our Underwriter and broker-dealers participating in this offering and their officers and partners, and except transfers by operation of law or by reason of our reorganization.

These warrants contain provisions for appropriate adjustment in the event of any merger, consolidation, recapitalization, reclassification, stock dividend, stock split or similar transaction. The warrants do not entitle our Underwriter or a permissible transferee to any rights as a stockholder until the warrants are exercised and shares of our common stock are purchased pursuant to the exercise of the warrants.

These warrants and the shares of our common stock issuable upon their exercise may not be offered for sale except in compliance with the applicable provisions of the Securities Act. We have agreed that if we file a registration statement with the Securities and Exchange Commission, our Underwriter will have the right, for a period of seven years from the closing date of this offering, commencing one year from the closing date of this offering, to include in such registration statement the shares of our common stock issuable upon exercise of the warrants. In addition, we have agreed to register the shares of common stock underlying the warrants under certain circumstances upon the request of a majority of the holders of the warrants during the period commencing one year from the closing date of this offering and expiring 48 months thereafter.

Electronic distribution; directed share program

Our Underwriter has advised us that it will not engage in any electronic offer, sale or distribution of our units. Neither we nor our Underwriter will use any third party to host or provide access to our preliminary prospectus on the Internet.

We will not have a directed unit program for our employees.

Price stabilization, short positions and penalty bids

Until the distribution of the units is completed, Securities and Exchange Commission rules may limit our Underwriter from bidding for and purchasing our common stock and warrants. In connection with this offering, however, our Underwriter may engage in stabilizing transactions, over-allotment transactions, covering transactions and penalty bids in accordance with Regulation M under the Securities Exchange Act of 1934, as amended.

- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.
- Over-allotment involves sales by our Underwriter of units in excess of the number of units our Underwriter is obligated to purchase, which creates a short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of units over-allotted by our Underwriter is not greater than the number of units that it may purchase in the over-allotment option. In a naked short position, the number of units involved is greater than the number of units in the over-allotment option. Our Underwriter may close out any covered short position by either exercising its over-allotment option or purchasing common stock or warrants in the open market.
- Covering transactions involve the purchase of common stock and warrants in the open market after the distribution has been completed in order to cover short positions. In determining the source of shares to close out the short position, our Underwriter will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which it may purchase units through the over-allotment option. If our Underwriter sells more units than could be covered by the over-allotment option (a naked short position) the position can only be closed out by buying common stock or warrants in the open

market. A naked short position is more likely to be created if our Underwriter is concerned that there could be downward pressure on the price of the common stock or warrants in the open market after pricing that could adversely affect investors who purchase in this offering.

- Penalty bids permit our Underwriter to reclaim a selling concession from a selected dealer when the unit originally sold by the selected dealer is purchased in a stabilizing covering transaction to cover short positions.

These stabilizing transactions, covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock and warrants or preventing or retarding a decline in the market price of our common stock and warrants. As a result, the price of our common stock and warrants may be higher than the price that might otherwise exist in the open market. Neither we nor our Underwriter makes any prediction or any representation as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock and warrants. Neither we nor our Underwriter makes any representation that our Underwriter will engage in these transactions. These transactions may be effected on the NYSE MKT Exchange or otherwise and, if commenced, may be discontinued without notice at any time.

Lockup arrangements

Our officers and directors who beneficially own 1,062,195 shares of common stock, including 600,000 shares of common stock issuable pursuant to vested stock options, and 287,195 shares issuable upon conversion of Series A, B and C Preferred Stock, have agreed with our Underwriter not to sell their shares of common stock for 13 months from the effective date of the registration statement of which this prospectus is a part without the written consent of our Underwriter. Of these shares, 531,097 shares of Common Stock are eligible for early relief from the lockup if our Common Stock trades at or above $10 per share for 10 consecutive trading days commencing six months from the effective date of this offering.

A selling stockholder who beneficially own 1,117,500 shares of common stock, including 30,000 shares of common stock issuable pursuant to vested stock options have agreed with our Underwriter not to sell its shares of common stock for 13 months from the effective date of the registration statement of which this prospectus is a part without the written consent of our Underwriter.

Our Underwriter has no present intention to waive or shorten the lockup period. The granting of any waiver of release would be conditioned, in the judgment of our Underwriter, on such sale not materially adversely impacting the prevailing trading market for our common stock on the NYSE MKT Exchange. Specifically, factors such as average trading volume, recent price trends and the need for additional public float in the market for our common stock and warrants would be considered in evaluating such a request to waive or shorten the lockup period.

Following the expiration of the lockup period, all 2,179,695 shares of common stock, including 630,000 shares of common stock issuable pursuant to vested stock options, and 287,195 shares issuable upon conversion of Series A, B and C Preferred Stock beneficially held by our officers and directors will be available for sale by such persons subject to holding period restrictions on sale under Rule 144 of the Securities Act. We have registered the resale of these shares by a separate prospectus.

Board of Directors observation rights

For a period of three years after the date of this prospectus, our Underwriter has the right to appoint an observer reasonably acceptable to us to attend all meetings of our Board of Directors. We will reimburse this person for expenses incurred in attending any meeting.

Indemnification

We have agreed to indemnify our Underwriter and its controlling persons against specified liabilities, including liabilities under the Securities Act or to contribute to payments that our Underwriter may be required to make for such liabilities. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to

directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

Legal Matters

The validity of the securities offered hereby will be passed on for us by Howard J. Kern, PC, Pacific Palisades, California. Brownstein Hyatt Farber Schreck, LLP, Denver, Colorado, is representing our Underwriter.

Experts

The predecessor financial statements of Heatwurx, Inc. as of and for the year ended December 31, 2010, and for the period from January 1, 2009 (date of inception) to April 15, 2011 and the financial statements of the successor entity, Heatwurx, Inc., as of December 31, 2011 and for the period from April 16, 2011 (date of incorporation) to December 31, 2011, appearing in this Prospectus and Registration Statement have been audited by Hein & Associates, LLP, an independent registered public accounting firm, as stated in their report appearing elsewhere herein, and are included in reliance upon such report and upon the authority of such firm as experts in accounting and auditing.

Where You Can Find More Information

We have filed with the SEC a registration statement on Form S-1 (File Number 333-_____) under the Securities Act with respect to the units offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits filed therewith. For further information about us and the units offered hereby, reference is made to the registration statement and the exhibits filed therewith.

Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and in each instance we refer you to the copy of such contract or other document filed as an exhibit to the registration statement. We currently do not file periodic reports with the SEC. Upon closing of our initial public offering, we will be required to file periodic reports, proxy statements and other information with the SEC pursuant to the Exchange Act.

A copy of the registration statement and the exhibits filed therewith may be inspected without charge at the public reference room maintained by the SEC, located at 100 F Street, NE, Washington, DC 20549, and copies of all or any part of the registration statement may be obtained from that office. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC also maintains a website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the website is www.sec.gov.

If you are a stockholder, you may request a copy of these filings at no cost by contacting us at: 6041 South Syracuse Way, Suite 315, Greenwood Village, Colorado 80111.

Index to Financial Statements

Heatwurx, Inc. and Predecessor Carve-Out (A Development Stage Company)

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Heatwurx, Inc.
Greenwood Village, Colorado

We have audited the accompanying statement of assets, liabilities and divisional net equity of the predecessor carve-out entity to Heatwurx, Inc. (the "Company" or "Successor") a development stage company, as of December 31, 2010 and the related statements of operations, divisional net equity, and cash flows for the year ended December 31, 2010 and for the period from January 1, 2009 (date of inception) to April 15, 2011 and the balance sheet of the successor entity, Heatwurx, Inc., as of December 31, 2011 and the related statements of operations, stockholders' equity, and cash flows for the period from April 16, 2011 (date of incorporation) to December 31, 2011. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

The accompanying statements of assets, liabilities and divisional net equity as of December 31, 2010 and the related statements of operations, divisional net equity, and cash flows for the year ended December 31, 2010 and for the period from January 1, 2009 (date of inception) to December 31, 2010 and to April 15, 2011 of the predecessor carve-out entity to Heatwurx, Inc. were prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission (for inclusion in the registration statement on Form S-1 of Heatwurx, Inc.).

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the predecessor carve-out entity to Heatwurx, Inc. at December 31, 2010, and the financial position of Heatwurx, Inc. as of December 31, 2011 and the results of the predecessor carve-out entity to Heatwurx, Inc. operations and cash flows for year ended December 31, 2010 and for the period from January 1, 2009 (date of inception) to December 31, 2010 and to April 15, 2011 and the results of operations of Heatwurx, Inc. for the period from April 16, 2011 (date of incorporation) to December 31, 2011**,** in conformity with accounting principles generally accepted in the United States of America.

/s/Hein & Associates LLP

Irvine, California
November 13, 2012

HEATWURX, INC. AND PREDECESSOR CARVE-OUT
(A Development Stage Company)
BALANCE SHEET AS OF SEPTEMBER 30, 2012 AND DECEMBER 31, 2011 AND STATEMENT OF ASSETS, LIABILITIES AND DIVISIONAL NET EQUITY AS OF DECEMBER 31, 2010

	As of September 30,	As of December 31,	
	2012 (Successor)	2011 (Successor)	2010 (Predecessor)
	(unaudited)		
ASSETS			
CURRENT ASSETS:			
Cash and cash equivalents	$ 1,392,312	$ 2,794,937	$ -
Accounts receivable	48,558	9,500	-
Prepaid expenses and other	47,791	-	-
Inventory	47,815	-	-
Total current assets	1,536,476	2,804,437	-
EQUIPMENT, net of depreciation	315,713	1,201	17,421
INTANGIBLE ASSETS	2,500,000	2,500,000	-
TOTAL ASSETS	$ 4,352,189	$ 5,305,638	$ 17,421
LIABILITIES AND STOCKHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Accounts payable	$ 101,713	$ -	$ -
Accrued liabilities	49,818	20,000	-
Interest payable	2,466	10,521	-
Income taxes payable	150	100	-
Loan payable	26,980	-	-
Current portion of senior secured notes payable	-	300,000	-
Total current liabilities	181,127	330,621	-
LONG-TERM LIABILITIES:			
Loan payable	115,030	-	-
Senior secured notes payable, net of current portion	-	1,200,000	-
Senior subordinated note payable	1,000,000	1,000,000	-
Total long-term liabilities	1,115,030	2,200,000	-
TOTAL LIABILITIES	1,296,157	2,530,621	
COMMITMENTS AND CONTINGENCIES (NOTE 9)			
STOCKHOLDERS' EQUITY:			
Series A Preferred Stock, $0.0001 par value, 600,000 issued and outstanding as of September 30, 2012 and December 31, 2011; liquidation preference of $558,518 and $528,462 as of September 30, 2012 and December 31, 2011, respectively	60	60	-
Series B Preferred Stock, $0.0001 par value, 1,500,000 shares issued and outstanding as of September 30, 2012 and December 31, 2011; liquidation preference of $3,227,507 and $3,047,432 as of September 30, 2012 and December 31, 2011, respectively	150	150	-
Series C Preferred Stock, $0.0001 par value, 760,000 shares issued and outstanding as of September 30, 2012; liquidation preference of $1,539,323 as of September 30, 2012	76	-	-
Common stock, $0.0001 par value, 20,000,000 shares authorized, 2,800,000 shares issued and outstanding at December 31, 2011 and 1,750,000 shares issued and outstanding at September 30, 2012	175	280	-
Additional paid-in capital	5,666,101	3,715,624	-
Divisional net equity	-	-	17,421
Accumulated deficit during development stage	(2,610,530)	(941,097)	-
Total stockholders' equity	3,056,032	2,775,017	17,421
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 4,352,189	$ 5,305,638	$ 17,421

The accompanying notes are an integral part of these financial statements

HEATWURX, INC. AND PREDECESSOR CARVE-OUT
(A Development Stage Company)
STATEMENT OF OPERATIONS

	For the period from April 16, 2011 (date of incorporation) through September 30, 2012	For the nine months ended September 30, 2012	Nine month period ended September 30, 2011		For the period from April 16, 2011 (date of incorporation) through December 31, 2011	For the period from January 1, 2009 (date of inception) through April 15, 2011	Year ended December 31, 2010
			For the period from April 16, 2011 (date of incorporation) through September 30, 2011	For the period from January 1, 2011 through April 15, 2011			
	(successor) (Unaudited)	**(successor)** (Unaudited)	**(successor)** (Unaudited)	**(predecessor)**	**(successor)**	**(predecessor)**	**(predecessor)**
REVENUE:							
Equipment sales	$ 160,694	$ 160,694	$ 5,820	$ 143,393	$ -	$ 279,473	$ 136,080
Other revenue	15,534	-	-	-	15,534	-	-
Total revenues	176,228	160,694	5,820	143,393	15,534	279,473	136,080
COST OF GOODS SOLD	100,149	100,149	937	76,792	-	222,332	145,540
GROSS PROFIT (LOSS)	76,079	60,545	4,883	66,601	15,534	57,141	(9,460)
EXPENSES:							
Selling, general and administrative	1,814,711	1,202,780	183,251	13,130	611,931	90,323	43,702
Research and development	529,273	355,493	54,578	14,689	173,780	187,642	106,432
Total expenses	2,343,984	1,558,273	237,829	27,819	785,711	277,965	150,134
(LOSS) INCOME FROM OPERATIONS	(2,267,905)	(1,497,728)	(232,946)	38,782	(770,177)	(220,824)	(159,594)
OTHER INCOME AND EXPENSE:							
Interest income	3,538	1,838	-	-	1,700	-	-
Interest expense	(326,590)	(154,070)	(111,196)	-	(172,520)	-	-
Total other income and expense	(323,052)	(152,232)	(111,196)	-	(170,820)	-	-
(LOSS) INCOME BEFORE INCOME TAXES	(2,590,957)	(1,649,960)	(344,142)	38,782	(940,997)	(220,824)	(159,594)
Income taxes	(250)	(150)	(75)	-	(100)	-	-
NET (LOSS) INCOME	$ (2,591,207)	$ (1,650,110)	$ (344,217)	$ 38,782	$ (941,097)	$ (220,824)	$ (159,594)
Net loss available to common stockholders	$(2,895,555)	$(1,879,281)	$(402,735)	-	$(1,016,274)	-	-
Net loss per common share basic and diluted	$(1.25)	$(1.03)	$(0.14)	-	$(0.36)	-	-
Weighted average shares outstanding used in calculating net loss per common share	2,312,360	1,821,918	2,800,000	-	2,800,000	-	-

The accompanying notes are an integral part of these financial statements.

HEATWURX, INC. AND PREDECESSOR CARVE-OUT
(A Development Stage Company)
STATEMENTS OF STOCKHOLDERS' EQUITY
FOR THE PERIOD FROM MARCH 29, 2011 THROUGH SEPTEMBER 30, 2012 AND DIVISIONAL NET EQUITY FOR THE PERIOD FROM DECEMBER 31, 2009 TO APRIL 15, 2011

	Series A Preferred Stock		Series B Preferred Stock		Series C Preferred Stock		Common Stock		Additional Paid-In Capital	Accumu-lated Deficit	Divisional Net Equity	Total
	Shares	$	Shares	$	Shares	$	Shares	$	$	$	$	$
Predecessor:												
Balance at December 31, 2009	–	–	–	–	–	–	–	–	–	–	16,251	–
Net loss	–	–	–	–	–	–	–	–	–	–	(159,594)	–
Net transactions with Parent	–	–	–	–	–	–	–	–	–	–	160,764	–
Balance at December 31, 2010	–	–	–	–	–	–	–	–	–	–	17,421	–
Net income	–	–	–	–	–	–	–	–	–	–	38,782	–
Net transactions with Parent	–	–	–	–	–	–	–	–	–	–	(41,969)	–
Balance at April 15, 2011	–	–	–	–	–	–	–	–	–	–	14,234	–
Successor:												
Issued upon incorporation on March 29, 2011	–	–	–	–	–	–	2,800,000	280	3,720	–	–	4,000
Issued pursuant to private placement dated April 15, 2011	600,000	60	–	–	–	–	–	–	499,940	–	–	500,000
Issued pursuant to private placement dated October 21, 2011	–	–	1,500,000	150	–	–	–	–	2,999,850	–	–	3,000,000
Stock-based compensation	–	–	–	–	–	–	–	–	212,114	–	–	212,114
Net loss for the period	–	–	–	–	–	–	–	–	–	(941,097)	–	(941,097)
Balance at December 31, 2011	600,000	60	1,500,000	150		–	2,800,000	280	3,715,624	(941,097)	–	2,775,017
Issued pursuant to private placement dated August 6, 2012	–	–	–	–	760,000	76	–	–	1,519,924	–	–	1,520,000
Stock-based compensation	–	–	–	–	–	–	–	–	430,448	–	–	430,448
Dividend payable on Series C Preferred Stock	–	–	–	–	–	–	–	–	–	(19,323)	–	(19,323)
1,050,000 shares acquired as Treasury stock and retired	–	–	–	–	–	–	(1,050,000)	(105)	105	–	–	–
Net loss	–	–	–	–	–	–				(1,650,110)	–	(1,650,110)
Balance at September 30, 2012 (Unaudited)	600,000	60	1,500,000	150	760,000	76	1,750,000	175	5,666,101	(2,610,530)	–	3,056,032

The accompanying notes are an integral part of these financial statements

HEATWURX, INC. AND PREDECESSOR CARVE-OUT
(A Development Stage Company)
STATEMENT OF CASH FLOWS

			Nine month period ended September 30, 2011				
	For the period from April 16, 2011 (date of incorporation) through September 30, 2012	**For the nine months ended September 30, 2012**	**For the period from April 16, 2011 (date of incorporation) through September 30, 2011**	**For the period from January 1, 2011 through April 15, 2011**	**For the period from April 16, 2011 (date of incorporation) through December 31, 2011**	**For the period from January 1, 2009 (date of inception) through April 15, 2011**	**Year ended December 31, 2010**
	(successor)	**(successor)**	**(successor)**	**(predecessor)**	**(successor)**	**(predecessor)**	**(predecessor)**
	(unaudited)	**(unaudited)**	**(unaudited)**				
CASH FLOWS FROM OPERATING ACTIVITIES:							
Net (loss) income	$ (2,591,207)	$ (1,650,110)	$ (344,217)	$ 38,782	$ (941,097)	$ (220,824)	$ (159,594)
Adjustments to reconcile (net loss) income to cash flows (used in) provided by operating activities:							
Depreciation	5,975	5,450	238	3,187	525	8,076	3,187
Bad debt expense	3,500	3,500	-	-	-	-	-
Non-cash expenses exchanged for services	1,694	-	-	-	1,694	-	-
Stock-based compensation	642,562	430,448	-	-	212,114	-	-
Changes in current assets and liabilities:							
Increase in receivables	(52,058)	(42,558)	(4,700)	-	(9,500)	-	-
Increase in inventory	(47,815)	(47,815)	-	-	-	-	-
Increase in prepaid and other	(47,791)	(47,791)	-	-	-	-	-
Increase in income taxes payable	150	50	75	-	100	-	-
Increase in accounts payable	101,713	101,713	5,899	-	-	-	(4,357)
Increase in accrued liabilities	30,495	10,495	7,693	-	20,000	-	-
Increase (decrease) in interest payable	2,466	(8,055)	9,863	-	10,521	-	-
Cash (used in) provided by operating activities	(1,950,316)	(1,244,673)	(325,149)	41,969	(705,643)	(212,748)	(160,764)
CASH FLOWS FROM INVESTING ACTIVITIES:							
Purchases of property and equipment	(323,382)	(319,962)	(3,420)	-	(3,420)	(22,310)	-
Acquisition of business from predecessor entity	(2,500,000)	-	(2,500,000)	-	(2,500,000)	-	-
Cash used in investing activities	(2,823,382)	(319,962)	(2,503,420)	-	(2,503,420)	(22,310)	-
CASH FLOWS FROM FINANCING ACTIVITIES:							
Proceeds from issuance of senior secured notes payable	1,500,000	-	1,500,000	-	1,500,000	-	-
Proceeds from issuance of senior subordinated note payable	1,000,000	-	1,000,000	-	1,000,000	-	-
Proceeds from issuance of common shares	4,000	-	4,000	-	4,000	-	-
Proceeds from issuance of Series A preferred shares	500,000	-	500,000	-	500,000	-	-
Proceeds from issuance of Series B preferred shares	3,000,000	-	-	-	3,000,000	-	-
Cash advances (to) from parent	-	-	-	(41,969)	-	235,058	160,764
Loan proceeds from CAT financial	142,010	142,010	-	-	-	-	-
Proceeds from issuance of Series C preferred shares	1,520,000	1,520,000	-	-	-	-	-
Repayment of senior secured notes payable	(1,500,000)	(1,500,000)	-	-	-	-	-
Cash provided by (used in) financing activities	$ 6,166,010	$ 162,010	$ 3,004,000	$ (41,969)	$ 6,004,000	$ 235,058	$ 160,764

HEATWURX, INC. AND PREDECESSOR CARVE-OUT
(A Development Stage Company)
STATEMENT OF CASH FLOWS

(continued)

			Nine month period ended September 30, 2011				
	For the period from April 16, 2011 (date of incorporation) through September 30, 2012	For the nine months ended September 30, 2012	For the period from April 16, 2011 (date of incorporation) through September 30, 2011	For the period from January 1, 2011 through April 15, 2011	For the period from April 16, 2011 (date of incorporation) through December 31, 2011	For the period from January 1, 2009 (date of inception) through April 15, 2011	Year ended December 31, 2010
	(successor)	(successor)	(successor)	(predecessor)	(successor)	(predecessor)	(predecessor)
	(unaudited)	(unaudited)	(unaudited)				
NET CHANGE IN CASH AND CASH EQUIVALENTS	1,392,312	(1,402,625)	175,431	-	2,794,937	-	-
CASH AND CASH EQUIVALENTS, beginning of period	-	2,794,937	-	-	-	-	-
CASH AND CASH EQUIVALENTS, end of period	$ 1,392,312	$ 1,392,312	$ 175,431	$ -	$ 2,794,937	$ -	$ -
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:							
Cash paid for interest	$ 333,988	$ 171,988	$ 101,333	$ -	$ 162,000	$ -	$ -
Cash paid for income taxes	$ 100	$ 100	$ -	$ -	$ -	$ -	$ -
NON CASH INVESTING AND FINANCING ACTIVITY:							
Dividend payable in accrued expenses	$ 19,323	$ 19,323	$ -	$ -	$ -	$ -	$ -

The accompanying notes are an integral part of these financial statements

1. PRINCIPAL BUSINESS ACTIVITIES:

Organization and Business – Heatwurx, Inc. ("Heatwurx", the "Company" or the "Successor") is a development stage, asphalt repair equipment and technology company. Heatwurx was incorporated on March 29, 2011 as Heatwurxaq, Inc. and subsequently changed its name to Heatwurx, Inc. on April 15, 2011. (Note 4)

As there was no financial activity subsequent to the date of incorporation on March 29, 2011 through April 15, 2011, the Company is using April 16, 2011 as the date of incorporation for the purpose of these financial statements and footnotes (other than the Company's Statement of Stockholders' Equity which includes the common stock issued upon the Company's actual incorporation date of March 29, 2011).

Development Stage – From the date of incorporation, the Company has been in the development stage and therefore is classified as a development stage company.

Interim Financial Statements – The accompanying unaudited financial statements has been prepared by the Company in accordance with accounting principles generally accepted in the United States of America for interim financial statements. Accordingly, it does not include all the information and notes required by accounting principles generally accepted in the United States of America for complete financial statements. In the opinion of management, all adjustments considered necessary for a fair statement of this financial information have been included. These financial statements should be read in conjunction with the audited financial statements and accompanying notes for the period ended December 31, 2011. The results of operations for the nine months ended September 30, 2012 are not necessarily indicative of the results for the full year ended December 31, 2012.

Predecessor Carve-Out Financial Statements – On April 15, 2011, the Company entered into an Asset Purchase Agreement with an individual who is a current stockholder of the Company. Pursuant to the agreement, the Company purchased the related business and activities of the design, manufacture and distribution of asphalt repair machinery under the Heatwurx brand. The assets acquired represent Heatwurx's predecessor under Rule 405 of the Regulation C of the Securities Act of 1933, as amended, as the assets acquired represent the acquisition of a business and Heatwurx's own operations were insignificant relative to the operations acquired. The accompanying predecessor financial statements present the full carve-out financial position, the relative revenues earned and expenses incurred, and the cash flows of the predecessor owner relative to the assets acquired.

Subsequent to the acquisition, the successor financial statements present the financial position, operations and cash flows of the assets acquired, the liabilities assumed and operations of the assets acquired as well as those acquired subsequently and are reflected at their purchase-date fair values. Those fair values are reflected as the cost of the assets acquired and the carrying amounts of the liabilities assumed, and are the basis of the resulting operations of the successor.

Prior to the acquisition of the predecessor assets, Heatwurx had minimal activity and was a development stage company. Its planned operations were to purchase the assets acquired and develop the business using the assets acquired. Heatwurx had no revenue for the period from incorporation on March 29, 2011 to the date of acquisition of the assets on April 15, 2011.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Basis of Presentation – These financial statements and related notes are presented in accordance with the accounting principles generally accepted in the United States and are expressed in U.S. dollars. The Company's fiscal year end is December 31.

The Company's financial statements are prepared using generally accepted accounting principles in the United States of America applicable to a going concern which contemplates the realization of assets and liquidation of liabilities in the normal course of business.

The Company also faces certain risks and uncertainties which are present in many emerging companies regarding product development, future profitability, ability to obtain future capital, protection of patents and property rights, competition, rapid technological change, government regulations, recruiting and retaining key personnel, and third party manufacturing organizations.

Successful completion of the Company's development program and its transition to profitable operations is dependent upon obtaining additional financing adequate to fulfill its development and commercialization activities, and achieve a level of revenues adequate to support the Company's cost structure. Management believes that current cash and other sources of liquidity are sufficient to fund planned operations through at least December 31, 2012.

Many of the Company's objectives to establish profitable business operations rely upon the occurrence of events outside its control; there is no assurance that the Company will be successful in accomplishing these objectives.

Use of Estimates – The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the use of estimates and assumptions by management that affect reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could materially differ from these estimates.

Cash and Cash Equivalents – The Company considers all highly liquid investments with a maturity at the date of purchase of three months or less to be cash equivalents. The Company had no cash equivalents at September 30, 2012. At times, the Company may have cash balances above the FDIC insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk.

Property and Equipment – Property and equipment consist of equipment, computer equipment and software and are stated at cost and are depreciated over the estimated useful lives of three years using a straight line depreciation methodology.

Impairment of Long-lived Assets – The Company periodically reviews its long-lived assets to determine potential impairment by comparing the carrying value of the long-lived assets with the estimated future net undiscounted cash flows expected to result from the use of the assets, including cash flows from disposition, whenever events or changes in circumstances indicate a potential impairment may exist. Should the sum of the expected future net cash flows be less than the carrying value, the Company would recognize an impairment loss at that date. An impairment loss would be measured by comparing the amount by which the carrying value exceeds the fair value (estimated discounted future cash flows) of the long-lived assets. There were no impairment charges for the period from April 16, 2011 (Date of Incorporation) through December 31, 2011.

Intangible Assets – Intangible assets consist of in-process research and development acquired as part of an acquisition. During development, in-process research and development is not subject to amortization and is tested for impairment. On completion of the project, in-process research and development are classified to developed technology and amortized over their estimated useful lives.

Stock-Based Compensation – The Company accounts for the cost of employee services received in exchange for the award of equity instruments based on the fair value of the award, determined on the date of grant. The expense is to be recognized over the period during which an employee is required to provide services in exchange for the award. The Company estimates forfeitures at the time of grant and makes revisions, if necessary, at each reporting period if actual forfeitures differ from those estimates. The Company estimated future unvested forfeitures at 0% for the period ended September 30, 2012.

Advertising Expense – The Company charges advertising costs to expense as incurred and such costs were not material for the period of March 29, 2011 (Date of Incorporation) through December 31, 2011.

Income Taxes – The Company and its predecessor accounts for income taxes using the asset and liability method of accounting for deferred income taxes.

The provision for income taxes includes federal and state income taxes currently payable and deferred taxes resulting from temporary differences between the financial statement and tax bases of assets and liabilities. Valuation allowances are recorded to reduce deferred tax assets when it is more-likely-than-not that a tax benefit will not be realized.

With respect to uncertain tax positions, the Company would recognize the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained upon examination by the taxing authorities, based on the technical merits of the position. The tax benefits to be recognized in the financial statements from such a position would be measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution.

Revenue Recognition – The Company sells its equipment (HWX-30 heater and HWX-AP-40 asphalt processor), as well as certain consumables, such as rejuvenation oil, to third parties. Equipment sales revenue is recognized when equipment is shipped to our customer and collection is reasonably assured.

Other revenue represents revenue earned by the Company for the rental of certain equipment.

Interest income is recognized as earned, over the term of the investment.

Fair Value of Financial Instruments – The Company measures its financial assets and liabilities at fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e., exit price) in an orderly transaction between market participants at the measurement date. Additionally, the Company is required to provide disclosure and categorize assets and liabilities measured at fair value into one of three different levels depending on the assumptions (i.e., inputs) used in the valuation. Level 1 provides the most reliable measure of fair value while Level 3 generally requires significant management judgment. Financial assets and liabilities are classified in their entirety based on the lowest level of input significant to the fair value measurement. The fair value hierarchy is defined as follows:

- Level 1 – quoted prices in active markets for identical assets or liabilities,
- Level 2 – other significant observable inputs for the assets or liabilities through corroboration with market data at the measurement date,
- Level 3 – significant unobservable inputs that reflect management's best estimate of what market participants would use to price the assets or liabilities at the measurement date.

The carrying amount of certain financial instruments, including cash and cash equivalents and interest payable approximates fair value due to the relatively short maturity of such instruments. The senior secured and senior subordinated notes payable approximates the fair value of such instrument based upon management's best estimate of interest rates that would be available to the Company for similar financial arrangement at September 30, 2012. The Company does not have any fair value instruments for assets and liabilities measured at fair value on a recurring or non-recurring basis, consequently, the Company did not have any fair value adjustments for assets and liabilities measured at fair value at September 30, 2012, nor gains or losses reported in the statement of operations.

Recent Accounting Pronouncements – In May 2011, the Financial Accounting Standards Board ("FASB") issued ASU 2011-04, *Fair Value Measurement* ("ASU 2011-04"), which amended ASC 820, *Fair Value Measurements* ("ASC 820"), providing a consistent definition and measurement of fair value, as well as similar disclosure requirements between U.S. GAAP and International Financial Reporting Standards. ASU 2011-04 changes certain fair value measurement principles, clarifies the application of existing fair value measurement and expands the disclosure requirements. ASU 2011-04 became effective for the Company beginning January 1, 2012. The adoption of ASU 2011-04 did not have a material effect on the Company's financial statements or disclosures.

In June 2011, the FASB issued ASU 2011-05, *Comprehensive Income (Topic 20): Presentation of Comprehensive Income*, which is effective for annual reporting periods beginning after December 31, 2011. ASU 2011-05 became effective for the Company on January 1, 2012. The guidance eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. In addition, items of other comprehensive income that are reclassified to profit or loss are required to be presented separately on the face of the financial statements. This guidance is intended to increase the prominence of other comprehensive income in financial statements by requiring that such amounts be presented either in a single continuous statement of income and comprehensive income or separately in consecutive statements of income and comprehensive income. The adoption of ASU 2011-05 did not have a material effect on the Company's financial statements or disclosures.

In September 2011, the FASB issued ASU 2011-08, *Testing Goodwill for Impairment* ("ASU 2011-08"), which amends the guidance in ASC 350-20, *Intangibles—Goodwill and Other – Goodwill.* ASU 2011-08 provides entities with the option of performing a qualitative assessment before calculating the fair value of the reporting unit when testing goodwill for impairment. If the fair value of the reporting unit is determined, based on qualitative factors, to be more-likely-than-not less than the carrying amount of the reporting unit, the entities are required to perform a two-step goodwill impairment test. ASU 2011-08 became effective for the Company beginning January 1, 2012. The adoption of ASU 2011-08 did not have a material effect on the Company's financial statements or disclosures.

Subsequent Events – The Company performed an evaluation of subsequent events through the date of this filing.

3. PROPERTY AND EQUIPMENT:

A summary of the cost of property and equipment, by component, and the related accumulated depreciation is as follows:

	September 30, 2012	December 31, 2011	December 31, 2010
Computer equipment & software	$ 10,174	$ -	$ -
Equipment	311,167	1,379	22,310
	321,341	1,379	22,310
Accumulated depreciation	(5,628)	(178)	(4,889)
	$ 315,713	$ 1,201	$ 17,421

Depreciation expense for the nine months ended September 30, 2012 and September 30, 2011 was $5,450 and $238, respectively. Depreciation expense was $525 and $3,187 for the years ended December 31, 2011 and 2010, respectively.

4. ACQUISITION:

On April 15, 2011, the Company entered into an Asset Purchase Agreement with an individual who is a current stockholder. Pursuant to the agreement, the Company purchased the related business and activities of the design, manufacture and distribution of asphalt repair machinery under the Heatwurx brand. The total purchase price was $2,500,000. The purchase price was paid in a $1,500,000 cash payment and the issuance of a senior subordinated note to the seller in the amount of $1,000,000. (Note 5)

The business essentially consisted of the investment in research and development of the technology, the patents applied for as a result of the research and development activities and certain distribution relationships that were in process, but not finalized as of the acquisition date. Collectively, these investments constitute the in-process research and development we refer to as the "asphalt preservation and repair solution". The Company capitalized $2,500,000 of in-process research and development related to this asphalt preservation and repair solution. Upon completion, the related in-process research and development asset will be amortized over its estimated useful life. The estimated fair value of the in-process research and development was determined using the income approach. Under the income approach, the expected future cash flows from the asset are estimated and discounted to its net present value at an appropriate risk-adjusted rate of return.

In conjunction with the Asset Purchase Agreement, the Company granted 200,000 performance stock options to a founder of the Company with an exercise price of $0.40 per share and a term of 7 years. Following the effectiveness of the 7 for 1 stock split that was completed in October 2011, the 200,000 performance stock options were exchanged for 1,400,000 performance stock options with an exercise price of $0.057 per share.

The performance stock options will vest in full on the occurrence of any the following: (1) The Company achieves total revenue in year 2013 of $24,750,000 determined in accordance with generally accepted accounting principles in the United States; (2) the Company achieves total revenue in year 2014 of $49,500,000; or (3) the Company achieves total revenue in year 2015 of $99,000,000. If the performance stock options do not vest per the aforementioned vesting schedule, the performance stock options will immediately terminate and expire.

The performance stock options are being accounted for as contingent consideration and were recognized at its estimated fair value at the acquisition date in the amount of $0.

5. NOTES PAYABLE:

Senior Secured Notes Payable – The Company issued senior secured promissory notes totaling $1,500,000 on April 15, 2011. The notes bear interest at a rate of 12% per annum and are due on October 15, 2013. As of December 31, 2011, the notes were subject to mandatory principal payments as follows:

Date of Payment	Amount of Payment
July 15, 2012	$ 150,000
October 15, 2012	150,000
January 15, 2013	150,000
April 15, 2013	300,000
July 15, 2013	300,000
October 15, 2013	450,000
Total principal payments	$ 1,500,000

On July 14, 2012, the Company entered into a First Amendment to Senior Secured Promissory Notes with the holders of the Senior Secured Notes Payable for a deferral of the scheduled principal payment of $150,000 that was due on July 15, 2012. The note holders agreed to relinquish their rights to receive the July 15, 2012 payment in exchange for the Company's early repayment of the Senior Secured Promissory Notes on or before August 31, 2012.

On August 6, 2012, the Company issued 760,000 Series C Preferred Stock for total gross proceeds of $1,520,000. The Series C Preferred Stock rank senior in liquidation and dividend preferences to the Company's common stock. Holders of Series C Preferred Stock accrue dividends at the rate per annum $.16 per share. On August 8, 2012, the Company repurchased and retired the outstanding Senior Secured Promissory Notes for the principal balance of $1,500,000 outstanding plus accrued interest.

Senior Subordinated Note Payable – The Company issued a senior subordinated note payable in the amount of $1,000,000 on April 15, 2011. The note bears interest at a rate of 6% per annum and matures on April 15, 2014. As of September 30, 2012 and December 31, 2011, the note is subject to mandatory principal payments as follows:

Date of Payment	Amount of Payment
October 15, 2013	$ 250,000
December 15, 2013	250,000
February 15, 2014	250,000
April 15, 2014	250,000
Total principal payments	$ 1,000,000

Interest on the senior subordinated note payable totaling $2,466 was outstanding at September 30, 2012.

6. INCOME TAXES:

The Company and its predecessor files income tax returns in the U.S. federal jurisdiction and the state of Utah. There are currently no income tax examinations underway for these jurisdictions since December 31, 2012 is the initial tax filing period.

The Company provides deferred income taxes for differences between the tax reporting bases and the financial reporting bases of assets and liabilities. The Company had no unrecognized income tax benefits. Should the Company incur interest and penalties relating to tax uncertainties, such amounts would be classified as a component of interest expense and operating expense, respectively. Unrecognized tax benefits are not expected to increase or decrease within the next twelve months.

Deferred Income Taxes – The Company does not recognize the deferred income tax asset at this time because the realization of the asset is less likely than not. As of December 31, 2011, the Company has net operating losses for federal and state income tax purposes of approximately $725,680 and $725,580, respectively, which are available for application against future taxable income and which will start expiring in 2031 and 2026, respectively. The benefit

associated with the net operating loss carry forward will more likely than not go unrealized unless a future operation is successful. Since the success of future operations is indeterminable, the potential benefits resulting from these net operating losses have not been recorded in the financial statements.

	December 31, 2011
Deferred Tax Assets:	
Net operating loss carry forward	$ 283,010
Stock-based compensation	82,724
Depreciation	85
Total	365,819
Valuation allowance for deferred tax asset	(349,879)
Total deferred tax assets	$ 15,941
Deferred Tax Liabilities:	
Deferred state taxes	$ 15,941
Total deferred tax liability	15,941
Net deferred tax asset	$ –

A reconciliation between the statutory federal income tax rate of 34% and our effective tax rate for the year ended December 31, 2011 is as follows:

Federal statutory income tax rate	(34.0)%
Deferred tax asset valuation allowance	34.0%
Effective income tax rate	-

7. STOCKHOLDERS' EQUITY:

Common Stock – The Company has authorized 20,000,000 common shares with a $0.0001 par value. As of September 30, 2012 there were 1,750,000 common shares outstanding.

Preferred Stock – The Company has authorized 3,000,000 shares of Preferred Stock with a $0.0001 par value. As of September 30, 2012, 600,000 shares were designated as Series A Preferred Stock, 1,500,000 shares were designated as Series B Preferred Stock and 760,000 shares were designated as Series C Preferred stock.

Series A Preferred Stock – As of September 30, 2012 there were 600,000 shares of Series A Preferred Stock outstanding.

The Series A Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series A Preferred Stock accrue dividends at the rate per annum of $0.066664. At September 30, 2012, Series A Preferred Stock had dividends accumulated of approximately $58,518. No dividends have been declared, therefore there are no amounts accrued on the balance sheet.

The holders of the Series A Preferred Stock have conversion rights equivalent to such number of fully paid and non-assessable shares of common stock as is determined by dividing the Series A original issue price of $0.8333 by the then applicable conversion price. The conversion ratio is subject to customary antidilution adjustments, including in the event that the Company issues equity securities at a price equivalent to less than the conversion price in effect immediately prior to such issue.

The holders of Series A Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series A Preferred Stock plus any accrued and unpaid dividends, whether or not declared, on the Series A Preferred Stock. A liquidation would be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the Company's common stock or assets or a merger, or consolidation. The Company believes that such liquidation events are within its control and therefore has classified the Series A Preferred Stock in stockholders' equity.

The holders of Series A Preferred Stock vote together as a single class with the holders of the Company's common stock on all action to be taken by the Company's stockholders. Each share of Series A Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which the

shares of the Series A Preferred Stock are convertible into as of the record date for determining stockholders entitled to vote on such matter.

In connection with the issuance of Series A Preferred Stock, the Company entered into an Investors' Rights Agreement (the "Rights Agreement"). The Rights Agreement provides that holders of at least 40% of the Series A Preferred Stock, including common stock into which the Series A Preferred Stock has been converted, may demand and cause the Company to register a Form S-1 or Form S-3, if eligible, on their behalf for the shares of common stock issued, issuable or that may be issuable upon conversion of the Series A Preferred Stock (the "Registrable Securities"). Whenever required under this agreement to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective.

Series B Preferred Stock – As of September 30, 2012 there were 1,500,000 shares of Series B Preferred Stock outstanding.

The Series B Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series B Preferred Stock accrue dividends at the rate per annum of $0.16 per share. At September 30, 2012, Series B Preferred Stock had dividends accumulated of approximately $227,507. No dividends have been declared, therefore there are no amounts accrued on the balance sheet.

The holders of the Series B Preferred Stock have conversion rights equivalent to such number of fully paid and non-assessable shares of common stock as is determined by dividing the Series B original issue price of $2.00 by the then applicable conversion price. The conversion ratio is subject to customary antidilution adjustments, including in the event that the Company issues equity securities at a price equivalent to less than the conversion price in effect immediately prior to such issue.

The holders of Series B Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series B Preferred Stock plus any accrued and unpaid dividends, whether or not declared, on the Series B Preferred Stock. A liquidation would be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the Company's common stock or assets or a merger, or consolidation. The Company believes that such liquidation events are within its control and therefore the Company has classified the Series B Preferred Stock in stockholders' equity.

The holders of Series B Preferred Stock vote together as a single class with the holders of the Company's common stock on all action to be taken by the Company's stockholders. Each share of Series B Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which the shares of the Series B Preferred Stock are convertible into as of the record date for determining stockholders entitled to vote on such matter.

In connection with the issuance of Series B Preferred Stock, the Company entered into an Investors' Rights Agreement with the same terms and conditions as the Rights Agreement for the Series A Preferred Stock described above.

Series C Preferred Stock – As of September 30, 2012 there were 760,000 shares of Series C Preferred Stock outstanding.

The Series C Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series C Preferred Stock accrue dividends at the rate per annum of $0.16 per share. At September 30, 2012, Series C Preferred Stock had dividends accumulated of approximately $19,323. As dividends are accrued and payable quarterly on the Series C Preferred Stock, the Company has accrued $19,323 for dividends payable in accrued expenses as of September 30, 2012.

The holders of the Series C Preferred Stock have conversion rights equivalent to such number of fully paid and non-assessable shares of common stock as is determined by dividing the Series C original issue price of $2.00 by the then applicable conversion price. The conversion ratio is subject to customary antidilution adjustments, including in the event that the Company issues equity securities at a price equivalent to less than the conversion price in effect immediately prior to such issue.

The holders of Series C Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series C Preferred Stock plus any accrued and unpaid dividends, whether or not declared, on the Series C Preferred Stock. A liquidation would be deemed to

occur upon the happening of customary events, including transfer of all or substantially all of the Company's common stock or assets or a merger, or consolidation. The Company believes that such liquidation events are within its control and therefore the Company has classified the Series C Preferred Stock in stockholders' equity.

The holders of Series B Preferred Stock vote together as a single class with the holders of the Company's common stock on all action to be taken by the Company's stockholders. Each share of Series C Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which the shares of the Series C Preferred Stock are convertible into as of the record date for determining stockholders entitled to vote on such matter.

In connection with the issuance of Series C Preferred Stock, the Company entered into an Investors' Rights Agreement with the same terms and conditions as the Rights Agreement for the Series A Preferred Stock described above.

Stock Options

	Number of Options	Weighted Average Exercise Price
Balance, December 31, 2011	300,000	$ 2.00
Granted	872,000	$ 2.00
Exercised	–	$ –
Cancelled	–	$ –
Balance, September 30, 2012	1,172,000	$ 2.00
Exercisable, September 30, 2012	1,172,000	$ 2.00

	Stock Options Outstanding			Stock Options Exercisable	
Exercise Price	Outstanding Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Options Exercisable	Weighted Average Exercise Price
$2.00	1,172,000	$2.00	4.44	860,000	$2.00

The fair value of each stock option granted was estimated on the date of grant using the Black Scholes option pricing model with the following assumptions:

	September 30, 2012	December 31, 2011
Risk-free interest rate range	0.62% – 0.91%	0.88% – 1.08%
Expected life	5.0 years	5.0 years
Expected volatility	39%	39%
Expected dividend	–	–
Fair value range of options at grant date	$0.675– $0.705	$0.704– $0.710

For the nine months ended September 30, 2012, the Company recorded stock-based compensation expense of $430,448. During the period ended December 31, 2011, the Company recorded stock-based compensation expense of $212,114.

As of September 30, 2012 there was $69,957 unrecognized compensation expense related to the issuance of the stock options.

Performance Stock Options

	Number of Options	Weighted Average Exercise Price
Balance, December 31, 2011 and September 30, 2012	1,440,000	$ 0.11
Exercisable, September 30, 2012	30,000	$ 2.00

Performance Options Outstanding		Performance Options Exercisable	
Outstanding Performance Options	Weighted Average Exercise Price	Performance Options Exercisable	Weighted Average Exercise Price
1,440,000	$ 0.11	30,000	$ 2.00

See Note 4 for further discussion of the performance options.

8. NET LOSS PER COMMON SHARE:

The Company computes loss per share of common stock using the two-class method required for participating securities. Our participating securities include all series of our convertible preferred stock. Undistributed earning allocated to these participating securities are added to net loss in determining net loss attributable to common stockholders. Basic and Diluted loss per share are computed by dividing net loss attributable to common stockholder by the weighted-average number of shares of common stock outstanding. No calculation was performed for the predecessor company as there was no common stock outstanding for the periods presented.

Outstanding options to purchase 1,212,000 (including 30,000 vested performance options) of common stock were outstanding for the periods ended September 30, 2012 and outstanding options to purchase 300,000 shares of common stock were outstanding for the period from April 16, 2011 through December 31, 2011, but were not included in the computation of diluted loss per share for the years then ended because the options' exercise price was greater than the average market price of the common shares and, therefore, the effect would be antidilutive. There were no options outstanding for the period from April 16, 2011 (incorporation) through September 30, 2011.

The calculation of the numerator and denominator for basic and diluted net loss per common share is as follows:

	For the period from April 16, 2011 (incorporation) through September 30, 2012	For the nine months ended September 30, 2012	For the period from April 16, 2011 (incorporation) through September 30, 2011	For the period from April 16, 2011 through December 31, 2011
Net Loss	$ (2,591,207)	$ (1,650,110)	$ (344,217)	$ (941,097)
Basic:				
Preferred stock cumulative dividend – Series A	58,518	30,026	58,518	28,492
Preferred stock cumulative dividend – Series B	227,507	180,822	-	46,685
Preferred stock cumulative dividend – Series C	18,323	18,323	-	-
Net income available to preferred stockholders	304,348	229,171	58,518	75,177
Net loss attributable to common stockholders	(2,895,555)	(1,879,281)	(402,735)	(1,016,274)
Net loss	$ (2,591,207)	$ (1,650,110)	$ (344,217)	$ (941,097)

9. **Commitments and Contingencies:**

Lease Commitments – On July 18, 2012, the Company entered into a thirteen month lease for office space for our corporate headquarters located in Greenwood Village, Colorado. Under the terms of the lease agreement, the Company leased approximately 2,244 square feet of general office space. The lease term commenced on July 23, 2012 and continues through August 31, 2013.

Total rent expense for the year ended December 31, 2011 was $34,000 and for the nine months ended September 30, 2012 was approximately $12,800.

Heatwurx, Inc.

1,500,000 Units consisting of
1,500,000 Shares of Common Stock and
850,000 Common Stock Warrants

PROSPECTUS

Gilford Securities Incorporated
_____, 2012

The information in this prospectus is not complete and may be changed. We may not sell these securities until the Registration Statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated _____, 2012

PROSPECTUS

Heatwurx, Inc.

Up to 7,910,000 Shares of Common Stock

We are registering:

- the resale by our common stockholders of 1,450,000 shares of outstanding common stock; and
- 6,460,000 shares of common stock issuable upon conversion of Series A, B and C Preferred Stock.

No public market currently exists for our common stock and we can give no assurance that a public market will develop for our securities following this offering. We have applied to list our common stock and $5.00 warrants on the NYSE MKT Exchange under the proposed symbols of "____" and "_____," respectively, but cannot assure you that the listing application will be approved.

We will not receive any proceeds from the sale of the 1,450,000 shares of common stock offered by our selling stockholders or from the sale of the 6,460,000 shares of common stock issuable upon conversion of Series A, B and C Preferred Stock and offered by our selling stockholders.

Investing in these securities involves a high degree of risk and immediate and substantial dilution. See "Risk Factors'' beginning on page 5.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Pursuant to Rule 416 of the Securities Act of 1933, as amended, there are also being registered hereunder additional shares of common stock as may be issued to the selling stockholders because of any future stock dividends, stock distributions, stock splits, similar capital readjustments or other anti-dilution adjustments.

The date of this prospectus is , 2012

Prospectus Summary

This summary highlights key aspects of the information contained elsewhere in this prospectus. You should read this entire prospectus carefully, including the financial statements and the notes to the financial statements included elsewhere in this prospectus. Unless otherwise indicated, the information contained in this prospectus assumes that all 2,860,000 shares of our preferred stock convert into 6,460,000 shares of common stock and that no warrants are exercised.

Heatwurx, Inc.

General

Heatwurx, Inc. was incorporated under the laws of the State of Delaware on March 29, 2011 as Heatwurxaq, Inc. and subsequently changed its name to Heatwurx, Inc. on April 15, 2011. Our founders were Larry Griffin and David Eastman, the principals of Hunter Capital Group, LLC, an investment banking entity, which acquired our technology, equipment designs, trademarks, and patent applications from Richard Giles, the inventor in April 2011. In connection with the acquisition, we raised $1,500,000 in senior secured debt and $500,000 through the offering of Series A Preferred Stock to three investors. In October 2011, we completed a 7-1 forward stock split and raised gross proceeds of $3,000,000 through the sale of our Series B Preferred Stock. In August 2012, we raised gross proceeds of $1,520,000 through the sale of our Series C Preferred Stock. In August 2012, the proceeds from the sale of the Series C Preferred Stock were used to repay our secured debt.

We have not yet fully commercialized our products and we are therefore classified as a developmental stage enterprise.

We are an Original Equipment Manufacturer of Asphalt preservation and repair equipment. Our innovative, and eco-friendly hot-in-place recycling process corrects surface distresses within the top three inches of existing pavement by heating the surface material in excess of 300° Fahrenheit with our electrically powered infrared heating equipment, mechanically loosening the heated material with our processor/tiller attachment that is optimized for producing a seamless repair, and mixing in additional recycled asphalt pavement and a binder (asphalt-cement), and then compacting repaired area with a vibrating roller or compactor. We consider our equipment to be eco-friendly as the Heatwurx process reuses and rejuvenates distressed asphalt, uses recycled asphalt pavement for filler material, eliminates travel to and from asphalt batch plants, and extends the life of the roadway. We believe our equipment, technology and processes provide savings over other processes that can be more labor and equipment intensive.

Our hot-in-place recycling process and equipment has been selected by the Technology Implementation Group of the American Association of State Highway Transportation Officials (AASHTO TIG) as an “additionally Selected Technology” for the year 2012. We develop, manufacture and intend to sell our unique and innovative and eco-friendly equipment to federal, state and local agencies as well as contractors for the repair and rehabilitation of damaged and deteriorated asphalt surfaces.

Our executive offices are located at 6041 South Syracuse Way, Suite 315, Greenwood Village, Colorado 80111 and our telephone number is (303) 532-1641. Our website is www.heatwurx.com.

The offering

Securities outstanding prior to this offering:	
Common stock	1,750,000 shares
Preferred stock	2,860,000 shares (1)
Securities offered:	
Common stock	1,450,000 shares
Common stock issuable upon conversion of Series A, B and C Preferred Stock	6,460,000 shares
Common stock to be outstanding after this offering	9,860,000 shares (2)
Use of proceeds	We will not receive any proceeds from the sale of the 1,450,000 shares of common stock offered by our selling stockholders. We will not receive any proceeds from the sale of the 6,460,000 shares of common stock issuable upon conversion of Series A, B and C Preferred Stock and offered by our selling stockholders.
Risk factors	Please read "Risk Factors" for a discussion of factors you should consider before investing in our common stock.
Proposed NYSE MKT Exchange symbol:	
· Common stock	"___"

(1) Preferred stockholders may elect to convert shares of their preferred stock into shares of common stock as follows:

- Series A – 600,000 shares of Series A Preferred Stock are convertible into 4,200,000 shares of common stock at $0.12 per share;
- Series B – 1,500,000 shares of Series B Preferred Stock are convertible into 1,500,000 shares of common stock at $2.00 per share; and
- Series C – 760,000 shares of Series B Preferred Stock are convertible into 760,000 shares of common stock at $2.00 per share.

(2) Amount gives effect to the automatic conversion of all 2,860,000 shares of preferred stock to 6,460,000 shares of common stock but does not include:

- the issuance of 1,022,000 and 1,440,000 shares of common stock upon exercise of stock options and performance stock options, respectively;
- the issuance of 25,000 units that may be sold by the Company upon exercise of the Underwriter's overallotment option;
- the issuance of 762,500 shares of common stock underlying 762,500 outstanding warrants issued by the Company, including the issuance of 12,500 warrants upon exercise of our Underwriter's overallotment option; and
- the issuance of 150,000 shares of common stock underlying warrants issued to our Underwriter in connection with this offering.

Selling Stockholders

This prospectus relates to:

- the resale by our common stockholders of 1,450,000 shares of common stock; and
- 6,460,000 shares of common stock issuable upon conversion of Series A, B and C Preferred Stock.

These securities were issued as follows:

- Common Stock: Upon incorporation on March 29, 2011, 2,800,000 shares of common stock were sold at $0.001 par value. In January 2012, 1,050,000 of these shares were cancelled, resulting in a balance of 1,750,000 shares of Common Stock.
- Series A Preferred Stock: In April 2011, we realized $500,000 from the sale of 600,000 shares of Series A Preferred Stock for $0.8333 per share.
- Series B Preferred Stock: In October 2011, we realized $3,000,000 from the sale of 1,500,000 shares of Series B Preferred Stock for $2.00 per share.
- Series C Preferred Stock: In August 2012, we realized $1,520,000 from the sale of 760,000 shares of Series C Preferred Stock for $2.00 per share.

The following tables set forth information regarding the shares of common stock owned beneficially as of September 30, 2012, by each selling stockholder and assumes the conversion of all 2,860,000 shares of preferred stock into 6,460,000 shares of common stock. The selling stockholders are not required, and may choose not to sell any of their shares of common stock.

None of the selling stockholders is an officer, director or other affiliate except as indicated below.

	Common stock			
Name of selling stockholder	Shares owned prior to offering(1)	Shares being Offered(1)	Shares owned after offering (1)	Percentage owned after offering (1)
Richard Giles (2)	1,087,500	1,087,500	-	-
W D Larson (3)	75,000	75,000	-	-
Capital Properties LLC	50,000	50,000	-	-
Gus Blass II	50,000	50,000	-	-
Gus Blass III (4)	50,000	50,000	-	-
Jay R Kuhne	50,000	50,000	-	-
Mason Family Trust	25,000	25,000	-	-
Chad K Kirby	12,500	12,500	-	-
Kelsey Kirby	12,500	12,500	-	-
Pole Creek Associates LLC	7,500	7,500		
Hillary Ridland	5,000	5,000	-	-
Kimberly Stump	5,000	5,000	-	-
Mccall Kuhne	5,000	5,000	-	-
Pamela A Pryor	5,000	5,000	-	-
Stacey Mercer	5,000	5,000	-	-
Steve Jackson	5,000	5,000		
Total Common Stock	1,450,000	1,450,000	-	-

Common stock issuable upon conversion of Series A Preferred Stock

Name of selling stockholder	Shares owned prior to offering	Shares being offered	Shares owned after offering (1)	Percentage owned after offering (1)
JMW Fund LLC (5)	225,000	225,000	-	-
San Gabriel Fund LLC (6)	225,000	225,000	-	-
Kirby Enterprise Fund LLC (7)	75,000	75,000	-	-
Charles F Kirby Roth 401k (8)	75,000	75,000	-	-
Total Series A Preferred Stock	600,000	600,000	-	-

Common stock issuable upon conversion of Series B Preferred Stock

Name of selling stockholder	Shares owned prior to offering	Shares being offered	Shares owned after offering (1)	Percentage owned after offering (1)
West Hampton Special Situations Fund, LLC	125,000	125,000	-	-
Kirby Enterprise Fund, LLC (7)	80,000	80,000	-	-
Capital Properties, LLC	75,065	75,065	-	-
Echo Capital Growth Corporation	75,065	75,065	-	-
Gus Blass, II	75,065	75,065	-	-
Gus John Blass, III (4)	75,065	75,065	-	-
Reg Greeenslade (9)	75,065	75,065	-	-
Buddy & Linda Walker Comm. Prop.	70,000	70,000	-	-
Jay R. Kuhne	60,065	60,065	-	-
Daryl & Stacy Monday Comm. Prop.	50,043	50,043	-	-
William J. Gordica	50,043	50,043	-	-
Underwood Family Partners	45,000	45,000	-	-
High Speed Aggregate	37,532	37,532	-	-
James T. Galvin	37,532	37,532	-	-
88 Lapis Investments, LLC	25,022	25,022	-	-
Goldstein Family Associates, a Colorado LLP	25,022	25,022	-	-
Reuben Sandler	25,022	25,022	-	-
The Russell Trust dtd 6/23/97	25,022	25,022	-	-
Wayne T. & Maria A. Grau, Joint Ten.	25,022	25,022	-	-
William Hubble	25,022	25,022	-	-
Kirby Enterprise Capital Management, LLC (10)	20,000	20,000	-	-
John Paulson	18,766	18,766	-	-
Donald P. Wells	15,013	15,013	-	-
Jeff P. Ploen	15,000	15,000	-	-
Pamela A Pryor	15,000	15,000	-	-
Bruce Stewart	12,511	12,511	-	-
Jerry Donahue	12,511	12,511	-	-
Lee & Janet Keyte Comm Pro.	12,511	12,511	-	-
Linda Waitsman & Kenton Spuehler Jt. Ten.	12,511	12,511	-	-
Shuster Family Trust dtd 4/4/80	12,511	12,511	-	-
Aaron A. & Patricia Grunfeld Jt. Ten.	12,500	12,500	-	-
Cecelia Yorke	12,500	12,500	-	-
David Erickson	12,500	12,500	-	-
Georgette Pagano	12,500	12,500	-	-
Linda G. McGrain	12,500	12,500	-	-
Mary Schneider	12,500	12,500	-	-
Michael A. Schneider	12,500	12,500	-	-
Stephen C. Ball	12,500	12,500	-	-
Justin & Jannina Yorke Comm. Prop.	12,494	12,494	-	-

Arthur Kassoff	10,000	10,000	-	-
Dennis J. Gordica	10,000	10,000	-	-
James R. Colburn	10,000	10,000	-	-
Patrick M. Reidy	10,000	10,000	-	-
Richard Orman	10,000	10,000	-	-
The Mulhern Family Trust UDT 8/20/92	10,000	10,000	-	-
The Riverbend Fund, LLC	10,000	10,000	-	-
Thomas E. Manoogian	10,000	10,000	-	-
Darlyne Garofalo	6,000	6,000	-	-
Andrew Elliot	5,000	5,000	-	-
Antonio & Boliva Castaneda Jt. Ten.	5,000	5,000	-	-
Barbara J. Chambers	5,000	5,000	-	-
Beverly Yorke	5,000	5,000	-	-
Brian R. Cullen	5,000	5,000	-	-
Chris Antonsen	5,000	5,000	-	-
Edward A. Cerkovnik. Sr.	5,000	5,000	-	-
Horst H. Engel	5,000	5,000	-	-
International Card Services, LLC	5,000	5,000	-	-
Taylor Keyte	5,000	5,000	-	-
Teddy Keyte	5,000	5,000	-	-
Weston P. Munselle	5,000	5,000	-	-
William Hoover	5,000	5,000	-	-
Fred M. & Virginia Rusk Comm. Rop.	3,000	3,000	-	-
Ximena Blanca Proano	2,500	2,500	-	-
Monica F. Burman	2,000	2,000	-	-
Doreen Fox Oswaks	500	500	-	-
Francis Guiltinan	300	300	-	-
Steven Guiltinan	300	300	-	-
Christopher & Laura Bragg Jt. Ten.	200	200	-	-
Kyle & Katie Miller	200	200	-	-
Michael & Jennifer Skeehan Jt. Ten.	200	200	-	-
Joeseph Guiltinan	150	150	-	-
Nicole Guiltinan	150	150	-	-
Total Series B Preferred Stock	1,500,000	1,500,000	-	-

Common stock issuable upon conversion of Series C Preferred Stock

Name of selling stockholder	Shares owned prior to offering	Shares being offered	Shares owned after offering (1)	Percentage owned after offering (1)
The Richland Fund LLC	125,500	125,500		
W Douglas Moreland	75,000	75,000		
Buddy Walker	75,000	75,000		
Alex Conner Blass Trust #3	31,000	31,000	-	-
Gus Blass II	31,000	31,000	-	-
Wayne T Grau	31,000	31,000	-	-
Reg Greenslade (9)	31,000	31,000	-	-
The Russell Trust Dtd 6/23/97	25,000	25,000		
Macquarie Private Wealth ITF Trevor	25,000	25,000		
Volcano Fund LLC	25,000	25,000		
Linda G McGrain	20,000	20,000		
Joseph W Skeehan	20,000	20,000		
Stephen C Ball	15,000	15,000	-	-
Goldstein Family Associates	15,000	15,000	-	-
High Speed Aggregate Inc	15,000	15,000		

Jay R Kuhne	15,000	15,000		
John Paulson Jr	15,000	15,000		
Donald P Wells	15,000	15,000	-	-
Echo Capital Growth Corporation	12,500	12,500	-	-
James T Galvin	12,500	12,500	-	-
Growth Ventures Inc Roth 401 K	12,500	12,500	-	-
William F Hubble	12,500	12,500		
Lee Keyte	12,500	12,500		
Jerry Donahue	10,000	10,000	-	-
Fisk Investments LLC	10,000	10,000	-	-
Aaron A Grunfeld	10,000	10,000	-	-
Shuster Family Trust Dtd 4/4/80	10,000	10,000		
Jim Williams	7,500	7,500	-	-
Susan Cooper	5,000	5,000	-	-
John Kennedy	5,000	5,000		
Weston P Munselle	5,000	5,000		
Michael A Schneider	5,000	5,000		
Frank Guiltinan	4,000	4,000	-	-
Georgette Pagano	3,500	3,500		
Barbara J Chambers	2,500	2,500	-	-
James R Colburn	2,500	2,500	-	-
Brian R Cullen	2,500	2,500	-	-
Beverly Yorke	2,500	2,500	-	-
Cecelia Yorke	2,500	2,500	-	-
Horst H Engel	2,000	2,000	-	-
Amy Antonsen	1,000	1,000	-	-
Joanna Antonsen	1,000	1,000	-	-
Sarah B Trainotti	1,000	1,000		
Monica F Burman	500	500	-	-
Total Series C Preferred Stock	760,000	760,000	-	-

(1) Amount gives effect to the automatic conversion of all 2,860,000 shares of preferred stock to 6,460,000 shares of common stock but does not include:

- the issuance of 1,022,000 and 1,440,000 shares of common stock upon exercise of stock options and performance stock options, respectively;
- the issuance of 225,000 units upon exercise of our Underwriter's overallotment option;
- the issuance of 862,500 shares of common stock underlying 862,500 outstanding warrants issued by the Company, including the issuance of 112,500 warrants upon exercise of our Underwriter's overallotment option; and
- the issuance of 150,000 shares of common stock underlying warrants issued to our Underwriter in connection with this offering.

(2) Mr. Giles owns more than 16.90% of the outstanding shares of our common stock. Mr. Giles has agreed to sell the Underwriter 300,000 shares to back 200,000 units in the event the Underwriter exercises its overallotment option. Assuming exercise of the overallotment option, Mr. Giles will own 11.30% of the outstanding shares of our common stock. Mr. Giles was a director of the Company from April 2011 to June 2012 and has been a consultant of the Company from April 2011 to the present.

(3) Mr. Larson is a director of our company.

(4) Mr. Blass III is a director of our company.

(5) JMW Fund LLC owns more than 5% of the outstanding shares of Company common stock. Justin Yorke is the Manager of the Fund and was a director from April 2011 until June 2012.

(6) San Gabriel Fund LLC owns more than 5% of the outstanding shares of Company common stock. Justin Yorke is the Manager of the Fund and was a director from April 2011 until June 2012.

(7) Kirby Enterprise Fund LLC owns more than 5% of the outstanding shares of Company common stock. Charles Kirby is the Manager of the Fund and was a director from April 2011 until October 2011.

(8) Charles F Kirby Roth 401k owns more than 5% of the outstanding shares of Company common stock. Charles Kirby was a director from April 2011 until October 2011.

(9) Mr. Greenslade is a director of our company.

(10) Kirby Enterprise Capital Management Fund LLC is an affiliate of a stockholder who owns more than 5% of the outstanding shares of Company common stock. Charles Kirby is the Manager of the Fund and was a director from April 2011 until October 2011.

Sale of Securities and Plan of Distribution

The sale of the securities described in this prospectus may be made from time-to-time in transactions, which may include block transactions by or for the account of the holders, in the over-the-counter market or in negotiated transactions through a combination of these methods of sale or otherwise. Sales may be made at fixed prices that may be changed, at market prices prevailing at the time of sale or at negotiated prices.

A post-effective amendment to the registration statement that includes this prospectus must be filed and declared effective by the Securities and Exchange Commission before a holder may:

- sell any securities described in this prospectus according to the terms of this prospectus either at a fixed price or a negotiated price, either of which is not at the prevailing market price;
- sell securities described in this prospectus in a block transaction to a purchaser who resells;
- pay compensation to a broker-dealer that is other than the usual and customary discounts, concessions or commissions; or
- make any arrangements, either individually or in the aggregate, that would constitute a distribution of the securities described in this prospectus.

Information contained in this prospectus, except for the cover page and the information under the heading ‘‘Selling Stockholders’’ is a part of a separate prospectus relating to a concurrent underwritten initial public offering by us. This prospectus contains information, including information relating to the concurrent underwritten offering, which may not be pertinent to the sale of the securities offered in this prospectus by the named holders.

No underwriting arrangements exist as of the date of this prospectus to sell any common stock on behalf of the selling stockholders. Upon being advised of any underwriting arrangements that may be entered into by a selling stockholder after the date of this prospectus, we will prepare a supplement to this prospectus to disclose those arrangements.

The selling stockholder may, from time to time, sell all or a portion of their shares of common stock at fixed prices that may be changed, at market prices prevailing at the time of sale, at prices related to such market prices or at negotiated prices. The selling stockholder may offer our common stock at various times in one or more of the following transactions:

- on any national securities exchange, or other market on which our common stock may be listed at the time of sale;
- in the over-the-counter market;
- through block trades in which the broker or dealer so engaged will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- through purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant to this prospectus;
- in ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- through options, swaps or derivatives;
- in privately negotiated transactions;
- in transactions to cover short sales; and
- through a combination of any such methods of sale.

In addition, the selling stockholder may also sell common stock pursuant to Rule 144 under the Securities Act of 1933 under the requirements of such rule, if available, rather than pursuant to this prospectus.

The selling stockholder may sell our common stock directly to purchasers or may use brokers, dealers, Underwriter or agents to sell our common stock upon terms and conditions that will be described in the applicable prospectus supplement. In effecting sales, brokers and dealers engaged by the selling stockholder may arrange for other brokers or dealers to participate. Brokers or dealers may receive commissions, discounts or concessions from a selling stockholder or, if any such broker-dealer acts as agent for the purchaser of such common stock , from such purchaser in amounts to be negotiated. Such compensation may, but is not expected to, exceed that which is customary for the types of transactions involved. Broker-dealers may agree to sell a specified number of such common stock at a stipulated price per share, and, to the extent such broker-dealer is unable to do so acting as agent for us or a selling stockholder, to purchase as principal any unsold common stock at the price required to fulfill the broker-dealer commitment. Broker-dealers who acquire common stock as principal may thereafter resell such common stock from time to time in transactions, which may involve block transactions and sales to and through other broker-dealers, including transactions of the nature described above, in the over-the-counter market or otherwise at prices and on terms prevailing at the time of sale, at prices related to the then-current market price or in negotiated transactions. In connection with such resales, broker-dealers may pay to or receive from the purchasers of such common stock commissions as described above.

The selling stockholder and any broker-dealers or agents that participate with them in sales of the common stock are deemed to be "Underwriter" within the meaning of the Securities Act of 1933 in connection with such sales. Accordingly, any commissions received by such broker dealers or agents and any profit on the resale of the common stock purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act of 1933.

From time to time the selling stockholder, other than officers, directors, and affiliates of the Company, may be engaged in short sales, short sales against the box, puts and calls and other hedging transactions in our securities, and may sell and deliver the common stock in connection with such transactions or in settlement of securities loans. These transactions may be entered into with broker-dealers or other financial institutions. In addition, from time to time, a selling stockholder may pledge its common stock pursuant to the margin provisions of its customer agreements with its broker-dealer. Upon delivery of the common stock or a default by a selling stockholder, the broker-dealer or financial institution may offer and sell the pledged common stock from time to time. Our officers, directors and a selling stockholder who beneficially own 2,479,695 shares of common stock, including 630,000 shares of common stock issuable pursuant to vested stock options, and 287,195 shares issuable upon conversion of Series A, B and C Preferred Stock, have agreed with our Underwriter not to sell their shares of common stock for 13 months from the effective date of the registration statement of which this prospectus is a part without the written consent of our Underwriter.

Heatwurx, Inc.

Up to 7,910,000 Shares of Common Stock

PROSPECTUS

, 2012

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other expenses of issuance and distribution

The following is a list of estimated expenses in connection with the issuance and distribution of the securities being registered, with the exception of underwriting discounts and commissions:

SEC registration fee	$ 2,902
FINRA filing fee	1,000
NYSE MKT listing fee	60,000
Printing costs	5,000
Legal fees and expenses	50,000
Accounting fees and expenses	50,000
Transfer agent fees	5,000
Blue sky fees and expenses	5,000
Miscellaneous	4,598
Total	$ 183,500

All of the above expenses except the SEC registration fee are estimates. All of the above expenses will be borne by the registrant.

Item 14. Indemnification of directors and officers

The Delaware Revised Statutes provide that a corporation may indemnify its officers and directors against expenses actually and reasonably incurred in the event an officer or director is made a party or threatened to be made a party to an action (other than an action brought by or on behalf of the corporation as discussed below) by reason of his or her official position with the corporation provided the director or officer (1) is not liable for the breach of any fiduciary duties as a director or officer involving intentional misconduct, fraud or a knowing violation of the law or (2) acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation and, with respect to any criminal actions, had no reasonable cause to believe his or her conduct was unlawful. The Delaware Revised Statutes further provide that a corporation generally may not indemnify an officer or director if it is determined by a court that such officer or director is liable to the corporation or responsible for any amounts paid to the corporation as a settlement, unless a court also determines that the officer or director is entitled to indemnification in light of all of the relevant facts and circumstances. The Delaware Revised Statutes require a corporation to indemnify an officer or director to the extent he or she is successful on the merits or otherwise successfully defends the action.

Our bylaws provide that we will indemnify our directors and officers to the maximum extent permitted by Delaware law, including in circumstances in which indemnification is otherwise discretionary under Delaware law. These indemnification provisions may be sufficiently broad to permit indemnification of our officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, which we refer to as the Securities Act. We have been advised that, in the opinion of the Securities and Exchange Commission, indemnification of directors or officers for liabilities arising under the Securities Act is against public policy and, therefore, such indemnification provisions may be unenforceable. The Underwriting Agreement, attached as Exhibit 1.1 hereto, provides for indemnification of the registrant's Underwriter and its officers and directors for certain liabilities, including matters arising under the Securities Act.

Item 15. Recent sales of unregistered securities

No underwriters were involved in the following issuances of securities.

The offers, sales and issuances of the securities described below were deemed to be exempt from registration under the Securities Act in reliance on Section 4(a)(2) and Rules 505 and 506 of Regulation D in that the issuance of securities to the accredited investors and fewer than 35 non-accredited investors did not involve a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Fewer than 35 non-accredited investors invested in the securities offered by us. Each of the non-accredited investors were provided with information required by Regulation D.

The offers, sales and issuances of the securities described under Plan-Related Issuances below were deemed to be exempt from registration under the Securities Act in reliance on Rule 701 in that the transactions were under compensatory benefit plans and contracts relating to compensation as provided under Rule 701, as applicable, and/or Section 4(a)(2) of the Securities Act of 1933. The recipients of such securities were our employees, directors or bona-fide consultants and received the securities under the 2011 Plan. Appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment, business or other relationships, to information about the Company.

Common stock

Upon incorporation on March 29, 2011, 2,800,000 shares of common stock were issued at $0.001 par value.These shares were issued to the founders in exchange for services rendered in organizing the company. On November 10, 2012, we issued 150,000 shares of common stock upon exercise of stock options by three former directors. These exercises were exempt under Rule 701. We have not sold any other shares of Common Stock.

Series A Preferred Stock. We sold the Series A Preferred Stock on April 15, 2011 to accredited investors for $600,000 in a private placement. We relied on the exemption provided by Section 4(a)(2) of the Securities Act of 1933. As of November 10, 2012, there were 600,000 shares of Series A Preferred Stock outstanding.

The Series A Preferred Stock has the following terms:

- annual dividend of $0.066664 cumulative dividend per share;
- dividends accrue but are not payable unless declared by the Board of Directors or unless dividends are to be paid on common stock;
- liquidation preference of $0.8333 per share with priority over common stock;
- convertible into common stock at $0.119047 per share for a total of 4,200,000 shares;
- voting rights equal to common stock on an as-converted basis; and
- automatically converts to 4,200,000 shares of common stock upon the closing of this offering.

Series B Preferred Stock. We sold the Series B Preferred Stock in October 28, 2011 to accredited and under 35 non-accredited investors for $3,000,000 in a private placement. We relied on the exemptions provided by Section 4(a)(2) of the Securities Act of 1933 and Rules 505 and 506 of Regulation D promulgated thereunder. As of September 30, 2012, there were 1,500,000 shares of Series B Preferred Stock outstanding.

The Series B Preferred Stock has the following terms:

- annual dividend of $0.16 cumulative dividend per share;
- dividends accrue but are not payable unless declared by the Board of Directors or unless dividends are to be paid on common stock;
- liquidation preference of $2.00 per share with priority over common stock;
- convertible into common stock at $2.00 per share for a total of 1,500,000 shares;
- voting rights equal to common stock on an as-converted basis; and

- automatically converts to 1,500,000 shares of common stock upon the closing of this offering.

Series C Preferred Stock. We sold the Series C Preferred Stock in August 6, 2012 to accredited investors and under 35 non-accredited investors for $1,520,000 in a private placement. We relied on the exemptions provided by Section 4(a)(2) of the Securities Act of 1933 and Rules 505 and 506 of Regulation D promulgated thereunder. As of November 10, 2012, there were 760,000 shares of Series C Preferred Stock outstanding.

The Series C Preferred Stock has the following terms:

- annual dividend of $0.16 cumulative dividend per share accrues and is payable quarterly;
- liquidation preference of $2.00 per share with priority over common stock;
- convertible into common stock at $2.00 per share for a total of 760,000 shares;
- voting rights equal to common stock on an as-converted basis; and
- automatically converts to 4,200,000 shares of common stock upon the closing of this offering.

Plan-Related Issuances

From March 29, 2011 through November 10, 2012, we granted options to purchase 1,210,500 shares of our common stock, exercisable at $2.00 per share, to our directors, officers, employees, consultants and other service providers under our Equity Compensation Plan, of which 38,500 have been subsequently forfeited.

All option issuance were granted in reliance upon Rule 701, as applicable, and/or Section 4(a)(2) of the Securities Act of 1933.

Performance Options

On March 29, 2011, we granted performance options to purchase 1,400,000 shares of our common stock exercisable at $0.057 per share under certain circumstances. These options were not issued under the Equity Compensation Plan. On June 21, 2012, we granted performance options to purchase 40,000 shares of our common stock exercisable at $2.00 per share under certain circumstances. All these options were granted in reliance upon Section 4(a)(2) of the Securities Act of 1933.

Item 16. Exhibits

(a) Exhibits

Number	Exhibit
1.1*	Form of Underwriting Agreement
2.1	Asset Purchase Agreement dated April 15, 2011
3.1	Third Amended and Restated Certificate of Incorporation of the registrant
3.2	Amended and Restated By-laws of the registrant
4.1*	Specimen of Common Stock Certificate
4.2*	Specimen of $5.00 Warrant to Purchase Common Stock
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10.10	Amended and Restated 2011 Equity Incentive Plan
10.11	Form of Stock Option Agreement Under 2011 Equity Incentive Plan
10.12	Form of Grant Notice under 2011 Equity Incentive Plan
10.13	Lease between Heatwurx, Inc. and [Name of Lessor] dated [Date of Lease]
14.1	Code of Ethics and Business Conduct
23.1*	Consent of the Law Office of Howard J. Kern, PC – see exhibit 5.1
23.2	Consent of Hein & Associates LLP, Independent Registered Public Accounting Firm
23.3	Consent of Brownstein Hyatt & Farber, P.C.
24.1	Power of Attorney

* To be filed by amendment.

(b) Financial Statement Schedules - schedules have been omitted because they are not required, they are not applicable or the information is already included in the financial statements or notes thereto.

Item 17. Undertakings

The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

    i. To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

    ii. To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

    iii. To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

    That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

2. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of this offering.

3. The undersigned registrant hereby undertakes to provide to our Underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by our Underwriter to permit prompt delivery to each purchaser.

4. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted against the registrant by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

5. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance under Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

6. For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Signatures

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Greenwood Village, State of Colorado, on November 14, 2012.

Heatwurx, Inc.

By /s/ Stephen Garland
Stephen Garland
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Stephen Garland and Allen Dodge, and each of them acting individually, as his true and lawful attorneys-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign the Registration Statement on Form S-1 of Heatwurx, Inc., and any or all amendments (including post-effective amendments) thereto and any new registration statement with respect to the offering contemplated thereby filed pursuant to Rule 462(b) of the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises hereby ratifying and confirming all that said attorneys-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement on Form S-1 has been signed by the following persons in the capacities and on November 14, 2012.

Signature	**Title**
/s/ Stephen Garland Stephen Garland	Chief Executive Officer, President and Interim Chairman (principal executive officer)
/s/ Allen Dodge Allen Dodge	Chief Financial Officer (principal financial and accounting officer)
/s/ Gus Blass III Gus Blass III	Director
/s/ Reginald Greenslade Reginald Greenslade	Director
/s/ Donald Larson Donald Larson	Director

EXHIBIT INDEX

Number	Exhibit
1.1*	Form of Underwriting Agreement
2.1	Asset Purchase Agreement dated April 15, 2011
3.1	Third Amended and Restated Certificate of Incorporation of the registrant
3.2	Amended and Restated By-laws of the registrant
4.1*	Specimen of Common Stock Certificate
4.2*	Specimen of $5.00 Warrant to Purchase Common Stock
4.3*	Form of Lockup Agreement – Officers and Directors
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24.1	Power of Attorney

_____

* To be filed by amendment.

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of April 15, 2011 by and between HEATWURXAQ, INC., a Delaware corporation ("Buyer"), and RICHARD GILES, an individual (the "Seller"). For reference to the Sections of this Agreement in which certain terms used herein are defined, see Section 7.14 on page 14. Buyer has been organized by the stockholders of Buyer, including Larry C. Griffin, David J. Eastman and Seller, for the purpose of acquiring the Business (as defined in Section 1.1) from Seller and obtaining funding for the development of the Business. Accordingly, in consideration of the mutual representations, warranties, covenants, agreements and conditions contained herein, the parties agree as follows:

ARTICLE I PURCHASE AND SALE OF ASSETS

1.1 Business: Acquired Assets. Seller is engaged in the business of the design, manufacture and distribution of asphalt repair machinery under the "Heatwurx" brand, and related business and activities (the "Business"). Subject to the terms and conditions of this Agreement, at the Closing Seller shall sell, transfer and deliver to Buyer, and Buyer shall purchase from Seller, all of the assets, properties and rights of Seller used in connection with the Business including, without limitation, those which are listed, identified or otherwise described on Schedule 1.1 attached hereto (collectively, the "Acquired Assets"). Notwithstanding any provision in this Agreement or any other writing or commitment (written or oral) to the contrary, Buyer will acquire only the Acquired Assets and neither Buyer nor any of its affiliates will acquire any other assets of Seller (or any predecessors or affiliates of Seller or any prior owners of all or part of their businesses and assets) of whatever nature, whether presently in existence or arising hereafter.

1.2 Accepted Liabilities. The Acquired Assets will be subject to only the obligations and liabilities which are listed, identified or otherwise described on Schedule 1.2 attached hereto (the "Accepted Liabilities"), none of which shall be assumed by Buyer. Notwithstanding any provision in this Agreement or any other writing or commitment (written or oral) to the contrary, Buyer will accept only the Accepted Liabilities and neither Buyer nor any of its affiliates will accept any other obligations or liabilities of Seller (or any predecessors or affiliates of Seller or any prior owners of all or part of their businesses and assets) of whatever nature, whether presently in existence or arising hereafter.

1.3 Purchase Price. In consideration of the sale and transfer of all of Seller's rights, title and interests in the Acquired Assets, Buyer shall pay to Seller the sum of Two Million Five Hundred Thousand Dollars ($2,500,000) (the "Purchase Price") as follows:

1.3.1 Closing Payment. The "Closing Payment" shall be a cash payment in the amount of $1,500,000. Buyer shall pay the Closing Payment to Seller at Closing by wire transfer of immediately available funds in accordance with wire transfer instructions provided to Buyer by Seller.

1.3.2 Senior Subordinated Note. The remainder of the Purchase Price shall be paid by the execution and delivery by Buyer to Seller of the Senior Subordinated Note of Buyer in the principal amount of $1,000,000 substantially in the form of Exhibit A attached hereto (the "Senior Subordinated Note").

1.4 Closing.

1.4.1 Date; Location. The closing of the purchase and sale of the Acquired Assets (the "Closing") provided for in this Agreement shall be held on April IS, 20 II, or on such other date as is mutually acceptable to Buyer and Seller, but in any event not later than five business days after satisfaction of the conditions set forth in Article IV hereof. The date on which the Closing occurs is referred to herein as the "Closing Date". The Closing shall take place at the offices of Parr Brown Gee & Loveless, 185 South State Street, #800, Salt Lake City, Utah 84111, or such other place as may be agreed to by the parties.

1.4.2 Seller Obligations. At the Closing, Seller shall deliver to Buyer the following (the form, content and substance of which shall be satisfactory to Buyer in all material respects):

(a) Such appropriately executed and authenticated instruments of sale, assignment, transfer and conveyance to Buyer of the Acquired Assets as Buyer or its counsel may reasonably request, such instruments to be satisfactory in form to Buyer and its counsel.

(b) The documents required to be delivered by Seller pursuant to Article IV.

1.4.3 Buyer Obligations. At the Closing, Buyer shall deliver to Seller the following (the form, content and substance of which shall be satisfactory to Seller in all material respects):

(a) The Closing Payment as provided in Section 1.3.1.

(b) The Senior Subordinated Note as provided in Section 1.3.2.

(c) The documents required to be delivered by Buyer pursuant to Article IV.

1.4.4 Subsequent Actions. If, at any time after the Closing, Buyer shall consider or be advised that any bills of sale, assignments, assurances, or any other actions or things are necessary or desirable to vest, perfect, or confirm of record or otherwise in Buyer the right, title, or interest in, to, or under any of the Acquired Assets or otherwise to carry out this Agreement, the officers and directors of Buyer shall be authorized to execute and deliver, in the name and on behalf of Seller, or otherwise, all such bills of sale, assignments, and assurances, and to take and do, in the name and on behalf of Seller or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect, or confirm any and all right, title, and interest in, to, and under such rights, properties, or assets in Buyer or otherwise to carry out this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer:

2.1.1 Authority: Governmental Authorization. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions provided for in this Agreement (the "Transaction"). This Agreement constitutes the valid and binding obligation of Seller enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought. No declaration, filing, or registration with, or notice to, or authorization, consent, or approval of, any governmental or regulatory body or authority, other than those which are referred to in this Agreement or have been obtained, is necessary for the execution and delivery of this Agreement by Seller or the consummation by Seller of the Transaction.

2.1.2 Litigation. No litigation, claim, proceeding or governmental investigation is pending for which Seller has been served or otherwise notified or, to the best knowledge of Seller, threatened or asserted against Seller, or Seller's properties or business including, but not limited to, claims, litigation or proceedings under product and/or services warranties or guarantees. There are no orders, judgments or decrees of any court or of any governmental agency or instrumentality (whether federal, state, local or foreign) to which Seller is a party which specifically apply to Seller or any of its properties, assets or operations. There is no litigation pending against any other person by Seller.

2.1.3 Compliance with Laws and Orders. Seller has complied with all laws, regulations, and orders applicable to him and to his assets or the conduct of his business. Seller has not received notice of any alleged violation of any laws, regulations or orders relating to Seller, the Acquired Assets or the conduct of Business.

2.1.4 Contracts and Commitments: Absence of Defaults: Violation of Agreements. Schedule 2.1.4 attached hereto contains a list of all of the contracts or agreements relating to the Business to which Seller is a party or by which Seller or any of the Acquired Assets is subject or bound ("Col/tracts"). All Contracts are valid, binding and enforceable in accordance with their terms, except as enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, relating to creditors' rights generally or by the availability of equitable remedies. Seller is not in default under or in violation of any provision of any of the Contracts to which he is a party or by which he or any of the Acquired Assets is subject or bound (with or without the lapse of time or the giving of notice or both). To the knowledge of Seller, the other party to any Contract is not in default under or in violation of any provision of such Contract (with or without the lapse of time or the giving of notice or both) which default would have a material adverse effect on the Business or the Acquired Assets. Seller has not received written notice of alleged nonperformance or other noncompliance with respect to its obligations under any of the Contracts nor any written notice that any of the contrasts may be totally or partially terminated or suspended by the other parties thereto. Neither the execution and delivery by Seller of this Agreement nor the consummation by it of the Transaction will conflict with, violate, result in a breach of or constitute a default

under any of the Contracts or result in the creation of any lien or encumbrance upon the Acquired Assets. True and correct copies of the Contracts have been delivered to Buyer. The assignment of the Contracts to Buyer will not conflict with, violate, result in a breach of or constitute a default under any of the Contracts.

2.1.5 Intellectual Property.

(a) Schedule 1.1 lists all Intellectual Property Rights owned by Seller and/or used in connection with the Business and included in the Acquired Assets (the "Seller Intellectual Property Rights").

(b) Except as set forth in Schedule 2.1.5, Seller owns, possesses, has the right to use, has the right to transfer and has the right to bring actions for the infringement of the Seller Intellectual Property Rights.

(c) Except as set forth in Schedule 2.1.5, no royalties or other amounts are payable by Seller to other persons by reason of the ownership or use of the Seller Intellectual Property Rights.

(d) To the knowledge of Seller no service or product marketed or sold or currently proposed by Seller to be marketed or sold in connection with the Business violates or will violate any license or infringes any Intellectual Property Rights of another, nor has Seller received any notice that any of the Seller Intellectual Property Rights or the operation or currently proposed operation of the Business conflicts or will conflict with the rights of others, nor is there any reasonable basis to believe that any such violation, infringement, or conflict will exist.

(e) As used in this Agreement, the term "Intellectual Property Rights" means patents, trademarks, service marks, trade names, copyrights, inventions, trade secrets, proprietary processes and formulae, applications and registrations for patents, trademarks, service marks and copyrights, operational methodologies, technical papers and documents, proprietary codes and all similar intellectual property rights and interests.

2.1.6 Insurance. Schedule 2.1.6 attached hereto contains a list of all insurance policies or binders maintained by Seller, covering any property or asset of, or otherwise insuring, Seller with respect to the Business. All such policies and binders are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid, and no notice of cancellation or termination has been received with respect to any such policy or binder. Schedule 2.1.6 also sets forth the name and amount of each pending claim (other than medical claims) made by Seller to the insurers under such policies. Seller has made available to Buyer a true and correct copy of each policy, binder, self insurance authorization and agreement listed in Schedule 2.1.6.

2.1.7 Environmental Matters.

(a) The Business is in all material respects in compliance with and has been since its inception in compliance with all applicable Environmental Laws. Seller has no knowledge of any past, present or, as anticipated by Seller, future events, conditions, activities, investigation, studies, plans or proposals that (i) would interfere with or prevent compliance with any Environmental Law by the Business or (ii) could reasonably be expected to give rise to any common law or other liability, or otherwise form the basis of a claim, action, suit, proceeding, hearing or investigation, involving the Business and related in any way to Hazardous Substances or Environmental Laws. "Environmental Laws" means all past and present laws, statutes, ordinances, rules, regulations, orders, guidelines, rulings, decrees, notices and determinations of any governmental authority pertaining to health, protection of the environment, natural resources, and regulation of activities involving a Hazardous Substance. "Hazardous Substances means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law.

(b) No litigation, claim, proceeding or governmental investigation is pending regarding any environmental matter relating to the Business for which Seller has been served or otherwise notified or, to the knowledge of Seller, threatened or asserted against Seller. There are no orders, judgments or decrees of any court or of any governmental agency or instrumentality under any Environmental Law which specifically apply to Seller, the Business or any of Seller's operations. Seller has not received from a governmental authority or other person (A) any notice that it is a potentially responsible person for any contaminated site or (B) any request for information about a site alleged to be Contaminated or regarding the disposal of Hazardous Substances. There is no litigation or proceeding against any other person by Seller regarding any environmental matter.

2.1.8 Title to and Condition of Acquired Assets. Seller has good and marketable title to the Acquired Assets, free and clear of all mortgages, liens, claims, security interests, easements, rights of way, pledges, restrictions, charges or encumbrances of any nature whatsoever (collectively, "Liens"). All of the tangible personal assets included in the Acquired Assets have been maintained in all material respects in accordance with generally accepted industry

practice. The tangible personal assets included in the Acquired Assets are in all material respects in good operating condition and repair, ordinary wear and tear excepted. The leased personal property included in the Acquired Assets is in all material respects in the condition required of such property by the terms of the leases applicable thereto. All items of inventories of products, if any, which are included in the Acquired Assets are in good condition and are of a quality usable and saleable in the ordinary course of business. The Acquired Assets include all of the assets, properties and rights which are necessary in order for the Business conducted by Seller prior to the Closing to be continued in substantially the same manner by Buyer after the Closing.

2.1.9 Employment and Contract Labor Agreements. Schedule 2.1.9 attached hereto sets for the names of all employees of Seller with respect to the Business and all persons providing services to Seller and the Business as contract services providers (collectively the "Employees"). Seller is not bound by or subject to (and none of the Acquired Assets is bound by or subject to) any written or oral, express or implied, employment contract, commitment or arrangement with any Employee. Seller is not bound by or subject to (and none of the Acquired Assets is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any person who is not an employee of Seller relating to services to be provided to or on behalf of Seller or the Business.

2.1.10 Financial Information: Accounts Receivable.

(a) Seller has provided to Buyer the financial information with respect to the Business and the Acquired Assets included in Schedule 2.10 attached hereto (the "Financial Information").

(b) All Accounts Receivable of Seller included in the Acquired Assets have arisen from bona fide transactions in the ordinary course of business and are collectible in full in accordance with their terms, except that the value of any account receivable the collection of which is currently doubtful has been written down to an amount not in excess of realizable market value. No counterclaims or offsetting claims or defenses to the collection of such receivables are pending or, to the knowledge of Seller, threatened

2.1.11 Absence of Certain Changes. Except as set forth on Schedule 2.1.11, since January 1, 2011 and through the date hereof:

(a) the Seller has conducted the Business in all material respects in the ordinary course;

(b) there has been no material adverse change in the business, assets, condition (financial or otherwise), results of operations or prospect of or with respect to the Business or the Acquired Assets; and

(c) there has been no casualty, loss, damage or destruction (whether or not covered by insurance) of any property that is material to the Business or that is included in the Acquired Assets.

2.1.12 Taxes. All material tax returns required to have been filed with any Governmental Entity in accordance with any applicable Law with respect to the Business have been duly filed and are correct and complete in all material respects, all taxes shown as due and owing on such tax returns have been paid in full, no material claims have been asserted in writing and no proposals or deficiencies for any material taxes are being asserted, proposed or, to the knowledge of Seller, threatened, and no audit or investigation of any such tax return is currently underway, pending or, to the knowledge of Seller, threatened, and Seller has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid to any employee, independent contractor, creditor, stockholder or other third party with respect to the Business.

2.1.13 Brokers and Finders. Seller has not employed any broker, finder or investment banker, or incurred any liability for any brokerage or investment banking fees, commissions or finder's fees, in connection with the Transaction.

2.1.14 Full Disclosure. The foregoing representations and warranties, taken as a whole, do not contain an untrue statement of a material fact or omit to state any material fact necessary to make any such representations and warranties not misleading.

2.2 Representations and Warranties of Buyer. Buyer hereby makes to Seller the following representations and warranties:

2.2.1 Due Organization and Valid Existence. Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware. Buyer has all requisite corporate power and authority to own, operate, and lease its property and to carryon its business as it is now being conducted.

2.2.2 Authority; Governmental Authorization. Buyer has the power and authority to execute and deliver this Agreement and to consummate the Transaction. This Agreement has been duly and validly authorized by Buyer and constitutes the valid and binding obligation of Buyer, enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the content before which any proceeding may be brought. No declaration, filing, or registration with, or notice to, or authorization, consent, or approval of, any governmental or regulatory body or authority, other than those which have been made or obtained prior to the date hereof and those described in this Agreement, is necessary for the execution and delivery of this Agreement by Buyer or the consummation by Buyer of the Transaction.

ARTICLE III COVENANTS

3.1 Covenants of Seller. Seller covenants and agrees with Buyer that Seller will use commercially reasonable efforts to effectuate the Transaction and to fulfill the conditions of his obligations under this Agreement described in Article IV. In addition, Seller covenants and agrees with Buyer as follows:

3.1.1 Conduct of Business, Etc. From and after the date of this Agreement to and including the Closing, Seller will carry on the Business in a reasonable and prudent manner consistent in all material respects with past practices, will notify Buyer of the occurrence of any event having a material impact upon the Business prospects or financial condition and, except as contemplated by this Agreement, without the prior written consent of Buyer, will not do any of the following:

(a) Purchase or otherwise acquire property or sell, lease or otherwise dispose of property.

(b) Enter into any material contracts, incur any material liabilities (other than in the ordinary course of business).

(c) Encumber or permit to be encumbered or dispose of any of the Acquired Assets.

(d) Make any distributions or pay any dividends on or relating to the Acquired Assets.

(e) Pay any bonuses to officers, agents, directors or consultants.

(f) Take any action inconsistent with preserving its existing Business and relations with employees, customers, clients, vendors, suppliers and others with whom it has business relationships, and with protecting the Acquired Assets.

(g) Enter into any material agreements or contracts affecting the Business or the Acquired Assets.

3.1.2 Breach of Representations and Warranties. Seller will not take any action which would cause or constitute a material breach of any of the representations and warranties set forth in Article II hereof or which would cause any of such representations and warranties to be inaccurate in any material respect. In the event of, and promptly after becoming aware of, the occurrence of or the pending or threatened occurrence of any event which would cause or constitute such a breach or inaccuracy, Seller will give detailed notice thereof to Buyer and Seller use reasonable efforts to prevent or promptly to remedy such breach or inaccuracy.

3.1.3 Access to Information. Buyer and its representatives will be permitted to examine the Acquired Assets, to make copies of or abstracts from all of the records and books of Seller with respect to the Business and Acquired Assets, to make copies of all Contracts and other contracts or documents to which Seller is a party with respect to the Business and Acquired Assets, and to discuss the affairs, finances and accounts of the Business with Seller's employees, counsel and accountants. Seller will furnish promptly to Buyer such additional financial and operating data and other documents and information related to the Business and Acquired Assets as Buyer may from time to time request, including arranging meetings with customers, clients and/or vendors of Seller.

3.1.4 Consents. Seller will promptly apply for or otherwise seek, and use its best efforts to obtain, all consents and approvals of all parties whose consent or approval is necessary for the valid and effective consummation and completion of the Transaction or is necessary in order that Seller may validly, lawfully and effectively perform and carry out its obligations hereunder.

3.1.5 Exclusivity. As additional consideration for this Agreement, taking into consideration the resources committed and to be committed to this Agreement by Buyer and its representatives and agents, Seller further agrees that for a

period from the date hereof until 20 days after the date hereof and regardless of whether or not any other provisions of this Agreement shall continue in effect during such period, (a) Buyer will have the exclusive right to negotiate for the purchase of the Acquired Assets or any part thereof or a similar transaction, (b) Seller will not directly or indirectly solicit, encourage or discuss a sale of the Acquired Assets or a similar transaction with any person or entity other than Buyer, and (c) Buyer will have a right of first refusal to match any competing offer relating to a sale of the Acquired Assets or a similar transaction, should such an offer to purchase materialize. Seller agrees that if Seller receives an offer or proposal relating to the possible sale of the Acquired Assets or any part thereof, Seller will immediately notify Buyer of said offer or proposal, the identity of the party making the offer or proposal and the specific terms of the offer or proposal.

3.2 Covenants of Buyer. Buyer covenants and agrees with Seller that Buyer will use commercially reasonable efforts to effectuate the Transaction and to fulfill the conditions of its obligations under this Agreement described in Article IV. Buyer covenants and agrees that it will not enter into any transactions or take any action that would be inconsistent with this Agreement.

3.3 Sales and Transfer Taxes. All state sales and transfer charges and taxes incurred in connection with the sale and transfer of the Acquired Assets to Buyer will be paid by Seller.

ARTICLE IV CONDITIONS

4.1 Conditions to the Obligations of the Parties. The obligations of the parties to consummate the Transaction are subject to the fulfillment at or before the Closing of each of the following conditions:

4.1.1 Litigation. There shall not be in effect any order, decree, or injunction of a court of competent jurisdiction restraining, enjoining, or prohibiting the consummation of the Transaction (each patty agreeing to use its best efforts, including appeals to higher courts, to have any such order, decree, or injunction set aside or lifted), and no action shall have been taken, and no statute, rule, or regulation shall have been enacted, by any state or the federal government or any governmental agency in the United States which would prevent the consummation of the Transaction.

4.1.2 Required Consents. Seller shall have obtained consents, in form reasonably satisfactory to Buyer, to the Transaction from the persons whose consent, if any, is required for the transfer or assignment to Buyer of any of the Acquired Assets.

4.1.3 Series A Preferred Stock Purchase Agreement and Senior Secured Notes Purchase Agreement. Buyer and the Purchasers named therein shall have entered into a Series A Preferred Stock Purchase Agreement and Senior Secured Notes Purchase Agreement (the "Stock and Notes Purchase Agreement") pursuant to which:

(a) Purchasers will purchase $1,500,000 principal amount of Senior Secured Notes from Buyer (the "Senior Secured Notes"), secured by a security interest in all of the assets of Buyer, including the Acquired Assets; and

(b) Purchasers will purchase 600,000 shares of Series A Convertible Preferred Stock of Buyer (the "Series A Preferred Stock") representing sixty percent (60%) of the outstanding capital stock of Buyer on a fully-diluted basis (excluding any shares of Common Stock issuable upon exercise of the stock options referred to in Section 4.1.6) for an aggregate purchase price of $500,000.

The Senior Secured Notes and the Series A Preferred Stock shall be issued, and the purchase prices therefor received by Buyer, concurrently with and conditional on the Closing. In addition, the Investors' Rights Agreement, Right of First Refusal and Co-Sale Agreement, and Voting Agreement referred to in the Stock and Notes Purchase Agreement shall be duly executed and delivered by all of the parties thereto concurrently with the Closing.

4.1.4 Seller Consulting Agreement. Buyer and Seller shall have executed and delivered a Consulting Agreement (the "Seller Consulting Agreement").

4.1.5 Griffin Employment Agreement. Buyer and Larry C. Griffin shall have executed and delivered an Employment Agreement (the "Griffin Employment Agreement").

4.1.6 Seller Stock Options. Buyer shall have delivered to Seller a Performance Stock Option Agreement (the "Seller Option Agreement") pursuant to which Seller has the option to purchase an aggregate of 200,000 shares of Common Stock of Buyer.

4.1.7 Restated Charter. The Amended and Restated Certificate of Incorporation of Buyer (the "Restated Charter") shall have been duly filed with the Secretary of State of Delaware.

4.2 Additional Conditions to Obligations of Seller. The obligations of Seller to consummate the Transaction are subject to the fulfillment (or waiver by Seller) at or before the Closing Date of each of the following additional conditions:

4.2.1 Representations and Warranties. The representations and warranties of Buyer contained in this Agreement shall be correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date.

4.2.2 Compliance with Covenants and Conditions. Buyer shall have performed and complied with all agreements and covenants required by this Agreement to be performed or complied with by it prior to or at the Closing Date.

4.2.3 Closing Certificate. Seller shall have received a certificate of an executive officer of Buyer certifying: (a) that each of the representations and warranties made by Buyer in this Agreement is true and correct in all material respects on the Closing Date as though made on and as of the Closing Date; and (b) that Buyer has performed and complied with all agreements and covenants under this Agreement to be performed or complied with by it prior to or at the Closing Date.

4.3 Additional Conditions to the Obligations of Buyer. The obligations of Buyer to consummate the Transaction are subject to the fulfillment (or waiver by Buyer) at or before the Closing Date of each of the following conditions:

4.3.1 Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date.

4.3.2 Compliance with Covenants and Conditions. Seller shall have performed and complied with all agreements and covenants required by this Agreement to be performed or complied with by him prior to or at the Closing Date.

4.3.3 Closing Certificate. Buyer shall have received a certificate of Seller certifying:

(a) that each of the representations and warranties made by Seller in this Agreement is true and correct in all material respects on the Closing Date as though made on and as of the Closing Date; and (b) that Seller has performed and complied with all agreements and covenants under this Agreement to be performed or complied with by him prior to or at the Closing Date.

4.3.4 Proceedings. All actions, proceedings, instruments, and documents required to carry out the Transaction and all other related legal matters shall have been reasonably satisfactory to and approved by Buyer and Buyer shall have been furnished with such certified copies of such corporate actions and proceedings and such other instruments and documents as shall have been reasonably requested by it.

4.3.5 No Material Adverse Change. Since the date hereof there shall have been no damage to or destruction of any of the Acquired Assets (whether or not covered by insurance), or any other event, development or condition of any character, including any change in business, properties, results of operations or financial condition, which has had or could reasonably be expected to have a material adverse effect on the Business or the Acquired Assets.

4.3.6 Satisfactory Completion of Due Diligence. Buyer shall have completed its review and investigation of the Business and the Acquired Assets and shall be satisfied in its sole discretion as to the Business and the Acquired Assets.

ARTICLE V SURVIVAL AND INDEMNIFICATION

5.1 Survival. All representations and warranties of any party contained in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the Transaction until six months after expiration of the statutes of limitations applicable to the matters covered thereby (including any extensions thereof). Notwithstanding the preceding sentence, any representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence if a Claim Notice (or its equivalent) with respect to a breach of such representation or warranty shall have been given prior to such date.

5.2 Indemnification by Seller. From and after the Closing and subject to the limitations of this Article V, Seller will indemnify and hold harmless Buyer and its officers, directors, stockholders, employees and agents (collectively, the "Buyer Indemnified Parties") from, for, and against any Losses incurred by a Buyer Indemnified Party by reason of or arising out of (a) any inaccuracy in any representation or warranty of Seller made in this Agreement, (b) any breach of a covenant by Seller in this Agreement, or (c) any obligations or liabilities of Seller other than the Accepted Liabilities. The indemnification obligation of Seller under this Agreement shall not exceed the purchase price of the Acquired Assets.

5.3 Indemnification by Buyer. From and after the Closing and subject to the limitations of this Article V, Buyer will indemnify and hold harmless Seller and its officers, directors and stockholders (collectively, the "Seller Indemnified Parties") from, for, and against any Losses incurred by a Seller Indemnified Party by reason of or arising out of (a) any inaccuracy in any representation or warranty of Buyer made in this Agreement, (b) any breach of a covenant by Buyer in this Agreement, or (c) any Accepted Liabilities.

5.4 Losses. As used in this Article V, the term "Losses" shall include: (a) all debts, liabilities and obligations; (b) all losses, damages (including, without limitation, consequential damages), judgments, awards, settlements, costs (including without limitation costs of complying with any governmental order) and expenses (including, without limitation, interest (including prejudgment interest in any litigated matter», penalties, court costs and attorneys' and paralegals' fees and expenses in connection with any trial, appeal, petition for review or administrative proceeding); and (c) all third party demands, claims, suits, actions, costs of investigation, causes of action, proceedings and assessments, whether or not ultimately determined to be valid.

5.5 Procedure Relating to Claims.

5.5.1 Notice of Claim. The indemnified party shall notify the indemnifying party in writing, and in reasonable detail, of the proposed claim for indemnification within sixty (60) calendar days after the indemnified party reasonably

becomes aware of the facts or circumstances upon which the claim may be based (the "Claim Notice"); provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the indemnifying party shall have been actually and materially prejudiced as a result of such failure.

5.5.2 Third-Party Claims. The indemnified party shall give notice to the indemnifying party, in accordance with Section 5.5.1, of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought hereunder (a "Third-Party Claim"). The indemnifying party may, at its own expense, (a) participate in and (b) upon notice to the indemnified party and the indemnifying party's written agreement that the indemnified party is entitled to indemnification for Losses arising out of such claim, suit, action or proceeding, at any time during the course of any such claim, suit, action or proceeding, assume the defense thereof; provided, that (y) the indemnifying party's counsel is reasonably satisfactory to the indemnified party and (z) the indemnifying party shall thereafter consult with the indemnified party upon the indemnified party's request for such consultation from time to time with respect to such claim, suit, action or proceeding. If the indemnifying party assumes such defense, the indemnified party shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party. If the indemnifying party does not assume such defense, the indemnifying party shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnified party. Whether or not the indemnifying party chooses to defend or prosecute any such claim, suit, action or proceeding, all of the parties hereto shall cooperate in the defense or prosecution thereof. In the event that the indemnifying party elects not to assume the defense of any claim, suit, action or proceeding, such election shall not relieve the indemnifying party of its obligations hereunder.

5.5.3 Direct Claims. If an indemnified party notifies an indemnifying party of any claim for indemnification hereunder that does not involve a Third-Party Claim (a "Direct Claim"), within 45 days after the date of such notice the amount of Losses payable pursuant to this Article V shall be paid to the indemnifying party unless the indemnifying party disputes in writing its liability for, or the amount of, any such Losses within such 45-day period, in which case such payment shall be made in respect of any matters not so disputed, and any Losses in respect of the matters so disputed shall be paid within ten business days after any final determination (by mutual agreement, litigation, arbitration or otherwise) that the indemnifying party is liable therefor pursuant to this Article V.

5.6 Calculation of Indemnity Payment. The amount of any loss, liability, claim, damage, expense or Tax for which indemnification is provided under this Article V shall be net of any amounts recovered or recoverable by the

indemnified party under insurance policies with respect to such loss, liability, claim, damage, expense or Tax. Any indemnity payment under this Agreement shall be treated as an adjustment to the Purchase Price, as applicable, for Tax purposes, unless a final determination with respect to the indemnified party or any of its affiliates causes any such payment not to be treated as an adjustment to the Purchase Price, as applicable for United States federal income tax purposes.

5.7 Setoff Against Senior Subordinated Note. Buyer shall have the right, in its sole discretion, to setoff against any principal or interest payments to be made by Buyer pursuant to the Senior Subordinated Note, the amount of any Losses for which Seller may be liable to Buyer pursuant to Section 5.2

ARTICLE VI TERMINATION

6.1 Termination by Seller and/or Buyer. This Agreement may be terminated at any time prior to the Closing as follows:

6.1.1 Mutual Consent. By mutual written consent of Seller and Buyer.

6.1.2 Delayed Closing. By either Seller or Buyer if the Closing shall not have occurred on or before May 31, 2011; provided, that the right to terminate this Agreement under this Section 6.1.2 shall not be available to a party whose failure to fulfill any obligation under this Agreement has been a significant cause of, or in any significant respect resulted in, the failure of the Closing to occur on or before that date.

6.1.3 Material Breach by Buyer. By Seller if there is a material breach of any of the representations and warranties of Buyer contained herein or if Buyer fails to comply in any material respect with any of its covenants or agreements contained herein and such breach or failure to comply is not remedied within 10 days after receiving a written notice thereof from Seller.

6.1.4 Material Breach by Seller or Stockholders. By Buyer if there is a material breach of any of the representations and warranties of Seller contained herein or if Seller fails to comply in any material respect with any of his covenants or agreements contained herein and such breach or failure to comply is not remedied by Seller within 10 days after receiving a written notice thereof from Buyer.

6.1.5 Court Proceeding. By either Seller or Buyer if any court of competent jurisdiction in the United States or any state shall have issued an order, judgment, or decree (other than a temporary restraining order or preliminary injunction) restraining, enjoining, or otherwise prohibiting the Transaction and such order, judgment, or decree shall have become final and nonappealable.

6.2 Effect of Termination. Except as set forth below in this Section 6.2 and as provided in Sections 3.1.6, 7.1, 7.10, 7.11, 7.12, 7.13 and 7.14, upon the termination pursuant to Section 6.1, this Agreement shall forthwith become null and void and no parity to this Agreement shall have any liability or further obligation to the other party by reason of this Agreement, other than for damages to the extent arising from a breach of this Agreement. Notwithstanding the foregoing, it is expressly agreed and understood that nothing in this Agreement shall preclude any party from seeking specific performance, injunctive relief, or any other remedies in the event of any breach or violation of any provision of this Agreement by the other party, and each party acknowledges that, in light of the unique benefit to it of its rights under this Agreement, such remedies shall be available in respect of any such breach or violation by it in any suit properly instituted in a court of competent jurisdiction.

ARTICLE VII MISCELLANEOUS AND GENERAL

7.1 Payment of Expenses. Each party shall pay its own out-of-pocket legal, accounting, and other expenses incidental to this Agreement and the transactions contemplated hereby, except as otherwise provided in Section 7.10 hereof.

7.2 Entire Agreement. This Agreement, including the Exhibits and Schedules attached hereto and the other agreements referred to herein, constitutes the entire agreement among the parties hereto and supersedes all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof.

7.3 Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to a person, firm, corporation, or entity other than the parties hereto any rights or remedies under or by reason of this Agreement or any transaction contemplated hereby.

7.4 Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified, and supplemented at any time prior to or at the Closing by written agreement among the parties.

7.5 Waiver. At any time prior to the Closing a party hereto may (a) extend the time for the performance of any of the obligations or other acts of any other party hereto, (b) waive any inaccuracies in the representations and warranties of another party contained in this Agreement or any document delivered by any other party pursuant hereto, and (c) waive compliance with any of the agreements or conditions to the obligations of any other party contained in this Agreement. Any extension or waiver by a party shall be valid only if set forth in an instrument in writing signed on behalf of such party.

7.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or e-mail shall be as effective as delivery of a manually executed counterpart of the Agreement.

7.7 Captions. The article, section, and paragraph captions herein are for convenience of reference only, do not constitute a part of this Agreement, and shall not be deemed to limit or otherwise affect any of the provisions hereof.

7.8 Notices. All notices, requests, demands, waivers, and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or mailed, certified or registered mail with postage prepaid, or sent by facsimile or e-mail as follows:

If to Seller:

Richard Giles
6300 Sagewood Drive, Suite 400
Park City, Utah 84098
Email: rich@heatwurx.com

For Buyer:

Heatwurxaq, Inc.
136 Heber Avenue, Suite 304
Park City, Utah 84060
Attn: Larry C. Griffin
Fax No.: 435-647-5614
Email: Larry.Griffin@huntcrcapital.com

or to such other person or address as any party shall specify by notice in writing. All such notices, requests, demands, waivers, and communications shall be deemed to have been received on the date of confirmed delivery or on the third business day after the mailing thereof.

7.9 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah regardless of the laws that might otherwise govern under applicable principles of conflicts of law.

7.10 Fees and Expenses. Should any litigation be commenced in connection with this Agreement, the parity prevailing shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for such party's attorneys' fees and expenses determined by the court in such litigation or in a separate action brought for that purpose.

7.11 Separability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only as broad as is enforceable.

7.12 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer rights or benefits on any third party.

7.13 Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by Buyer or Seller without the prior written consent of the other party hereto; provided, however, that Buyer may assign its rights and obligations under this Agreement to a wholly owned subsidiary of Buyer.

7. 14 Definitions, Schedule References and Exhibit References. As used in this Agreement, the following terms have the meanings assigned thereto, and the Schedules and Exhibits are referenced, in the Sections indicated below:

Defined Term	Section
Acquired Assets	1.1
Accepted Liabilities	1.2
Business	1.1
Claim Notice	5.5.1
Closing	104.1
Closing Date	104.1
Closing Payment	1.3.1
Contracts	2.104
Direct Claim	5.5.3
Employees	2.1.9
Environmental Laws	2.1.7
Griffin Employment Agreement	4.1.5
Hazardous Substance	2.1.7
Intellectual Property Rights	2.1.5(e)
Liens	2.1.8
Losses	5.4
Purchase Price	1.3
Restated Charter	4.1.8
Seller Consulting Agreement	4.6.4
Seller Indemnified Parties	5.3
Seller Intellectual Property Rights	2.1.5
Seller Option Agreement	4.1.6
Senior Secured Notes	4.1.3
Senior Subordinated Note	1.3.2
Series A Preferred Stock	4.1.3
Third-Party Claim	5.5.2
Transaction	2.1.1
Schedule References	Section
Schedule 1.1	1.1
Schedule 1.2	1.2
Schedule *2.104*	2.104

Schedule 2.1.5	2.1.5
Schedule 2.1.6	2.1.6
Schedule 2.1.9	2.1.9
Schedule 2.1.1 0	2.1.10
Schedule 2.1.1 I	2.1.11
Exhibit References	Section
Exhibit A	1.3.2

IN WITNESS WHEREOF, this Asset Purchase Agreement has been duly executed and delivered by the parties hereto as of the date first set forth above.

SELLER:

/s/Richard Giles

BUYER: HEATWURXAQ, INC.

By: /s/Larry Griffin

CEO, President

SCHEDULE 1.1

Acquired Assets

1. Personal Property and Equipment. The items of personal property and equipment listed or otherwise identified on Attachment A to this Schedule 1.1.

2. Customer Contracts. Any and all contracts, agreements, rights and understandings with customers, clients and or similar persons listed on Attachment B to this Schedule 1.1 (whether or not services currently are being provided by Seller to such persons), together with all documents and records related thereto (the "Customer Contracts").

3. Other Contracts. The contracts, agreements, rights and understandings listed, described or otherwise specifically referred to on Attachment C to this Schedule 1.1, together with all documents and records related thereto (the "Other Contracts

4. Seller Intellectual Property Rights. Any and all rights, title and interest of Seller in, to and under Intellectual Property Rights listed, described or otherwise specifically referred to on Attachment D to this Schedule 1.1, together with all documents and records related thereto, including domain names and web/internet sites and addresses.

5. Customer Accounts Receivable. Any and all billed accounts receivable and/or unbilled services related to the Customer Contracts (the "Customer Accounts Receivable").

6. Seller's Name. All rights, title and interest of Seller in and to the name "Heatwurx", and any and all other names used in connection with the Business.

7. Additional Items. The other assets, properties, rights and interests that are listed or described on Attachment E to this Schedule 1.1, together with all documents and records related thereto (the "Additional Items").

ATTACHMENT A TO SCHEDULE 1.1

None.

ATTACHMENT B TO SCHEDULE 1.1

1. Pending distribution agreement with Wheeler Machinery in Salt Lake City, Utah.

2. All aspects of a developing relationship with Caterpillar, Inc.

ATTACHMENT C TO SCHEDULE 1.1

1. Pending manufacturing agreement with Bowman Kemp in Ogden, Utah;

2. Pending manufacturing or licensing agreement with Caterpillar and subsidiaries

ATTACHMENT D TO SCHEDULE 1.1

1. Heatwurx trademark.

2. "Heatwurx" and all related tradenames.

3. heatwurx.com website and all related IP addresses.

4. HWX 30 product name, description and marketing collateral and all related parts, add-ons and all manufacturing drawings, descriptions and know how.

5. HWX AP40 product name, description and marketing collateral and all related parts, add-ons and all manufacturing drawings, descriptions and know how.

6. HWX 115 product name, description and marketing collateral and all related parts, add-ons and all manufacturing drawings, descriptions and know how.

7. Heatwurx Rehab oil product name, descriptions and marketing collateral and all related know how.

8. Any derivatives of 4-7 above.

9. Provisional patent application made June 24, 2010 for "Asphalt Repair System and Method" as filed by Clayton, Howarth & Cannon, attorney docket number TI2183.PROV.

10. Non-provisional patent application made December 31, 2009 (as priority to filing made January 2,2009) for "Infrared Heating System and Method for Heating Surfaces" as filed by Clayton, Howarth & Cannon, attorney docket number T 11872.

11. All corresponding rights, remedies and continuing ability to assert further claims to 9-I0 above.

12. All artwork, photos, videos and related collateral material relating to the Heatwurx brand, product and process, including the right to use the likeness of Mr. Giles (without royalty) as currently contained in that material.

ATTACHMENT E TO SCHEDULE 1.1

I. ASHTO TIG Nomination.

2. Relationship with UDOT.

3. Relationship with TXDOT.

4. Relationship with Federal Highways, including Highways for Life program.

5. National Parks relationship.

6. All business opportunities that arise from the above.

SCHEDULE 1.2

Accepted Liabilities

1. Customer Contracts. Any obligation or liability for payment or performance under any Customer Contract that arises after the Closing Date and relates solely to the period after the Closing Date.

2. Other Contracts. Any obligation or liability for payment or performance under any of the Other Contracts that arises after the Closing Date and relates solely to the period after the Closing Date.

3. Other Liabilities. The obligations or liabilities listed or otherwise identified on Attachment A to this Schedule 1.2.

SCHEDULE 2.1.4

None

SCHEDULE 2.1.5

None

SCHEDULE 2.1.6

None

SCHEDULE 2.1.9

None

SCHEDULE 2.1.10

None

SCHEDULE 2.1.11

None

THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
HEATWURX, INC.

Stephen Garland hereby certifies that:

ONE: The date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was March 29, 2011 under the name Heartwurxaq, Inc.

TWO: He is the duly elected and acting Chief Executive Officer of Heatwurx, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I: NAME

The name of this corporation is Heatwurx, Inc. (the **"Corporation"**).

ARTICLE II: REGISTERED OFFICE AND AGENT

The address of the corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, City of Dover, County of Kent, Delaware 19904. The name of the corporation's registered agent at such address is National Registered Agents, Inc.

ARTICLE III: PURPOSE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "**General Corporation Law**").

ARTICLE IV: AUTHORIZED SHARES

The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 20,000,000 shares of Common Stock, $0.0001 par value per share ("**Common Stock**"), and (ii) 3,000,000 shares of Preferred Stock, $0.0001 par value per share ("**Preferred Stock**").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. **COMMON STOCK**

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein .

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings), and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3. Dividends. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

4. Liquidation. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 3 of Division (B) of this Article Fourth.

5. Redemption. The Common Stock is not redeemable.

B. **PREFERRED STOCK**

The Preferred Stock authorized by this Certificate of Incorporation shall be issued in series. The first series shall be designated as "Series A Preferred Stock," and shall consist of Six Hundred Thousand (600,000) shares. The second series shall be designated as "Series B Preferred Stock, and shall consist of One Million Five Hundred Thousand (1,500,000) shares. The third series shall be designated as "Series C Preferred Stock, and shall consist of Seven Hundred Sixty Thousand (760,000) shares. The Corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance shall not be sufficient to permit conversion of the Preferred Stock.

The rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock are as follows:

1. Dividends. From and after the date of the issuance of any shares of Series A Preferred Stock, dividends at the rate per annum of $0.066664 and $0.16 per share shall accrue on such shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, respectively (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to either the Series A Preferred Stock or the Series B Preferred Stock) (the "**Accruing Dividends**"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided however, that except as set forth in the following sentence of this Section 1 or in Subsections 2.1 and 2.4.2(b), such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. From and after the date of the issuance of any shares of Series C Preferred Stock, dividends shall be payable quarterly at the rate per annum of $0.16 per share to the holders of Series C Preferred Stock on the last day of each fiscal quarter (the "**Series C Dividend**"). The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than the Series C Dividend and dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, respectively, in an amount at least equal to the greater of (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series A Original Issue Price (as defined below) or Series B Original Issue Price (as defined below), as the case may be; provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series A Preferred Stock or the Series B Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest dividend payable to the Series A Preferred Stock or the Series B Preferred Stock, respectively.

2. The "**Series A Original Issue Price**" shall mean $0.8333 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The "**Series B Original Issue Price**" is $2.00, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. The "**Series C Original Issue Price**" is $2.00, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock.

3. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and

Asset Sales.

3.1 Payments to Holders of Preferred Stock. In the event of any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, or Deemed Liquidation Event (as defined in Subsection 3.4 below), holders of each share of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock, *pari passu*, whether such assets are capital, surplus or earnings, an amount per outstanding share equal to the Series A Original Issue Price, Series B Original Issue Price, and Series C Original Issue Price, as the case may be, plus, (i) with respect to the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock. any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the "**Series A Liquidation Amount**" and the "**Series B Liquidation Amount**," respectively), (ii) with respect the Series C Preferred Stock, any Series C Dividends accrued but unpaid thereon, together with any other dividends declared but unpaid thereon (the "**Series C Liquidation Amount**"), before any sums shall be paid or any assets distributed among the holders of shares of Common Stock or shares ranking junior on liquidation to the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock. If the assets of the Corporation shall be insufficient to permit the payment in full to the holders of the Series A Preferred Stock, Series B Preferred Stock, and the Series C Preferred Stock of the amount thus distributable, then the entire assets of the Corporation available for such distribution shall be distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, and the Series C Preferred Stock on a *pro rata* basis.

3.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed on a *pro rata* basis among the holders of shares of Common Stock and shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock (determined on the basis of the number of whole shares of Common Stock into which the shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock are convertible) based on the number of shares held by each such holder.

3.3 Deemed Liquidation Events.

3.3.1 Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of at least a majority of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred, each voting as a separate class, elect otherwise by written notice sent to the Corporation at least fifteen (15) days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 3.3.1, all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and,

if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(c) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 3.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3.1 and 3.2.

3.3.2 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license or other disposition shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

4. Voting. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, as the case may be, held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall vote together with the holders of Common Stock as a single class.

5. Optional Conversion.

The holders of the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

5.1 Right to Convert.

5.1.1 Conversion Ratio. Each share of Series A Preferred Stock, each share of Series B Preferred Stock, and each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Series A Original Issue Price, the Series B Original Issuance Price, or the Series C Original Issuance Price, as the case may be, by the then applicable Conversion Price, defined and determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion. The current Conversion Price for the Series A Preferred Stock is $.119047 per share. The initial conversion price per share for Series B Preferred Stock shall be the Series B Original Issue Price. The initial conversion price per share for Series C Preferred Stock shall be the Series C Original Issue Price. Such Conversion Prices shall be adjusted as hereinafter provided. As of the date hereof, each holder of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock will receive seven shares, one share, and one share of Common Stock, respectively, upon conversion of their shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, as the case may be.

5.1.2 Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of such amounts distributable on such event to the holders of Series A Preferred Stock, Series B Preferred Stock, and/or the Series C Preferred Stock.

5.2 Fractional Shares. No fractional shares of Common Stock shall be

issued upon the conversion of any share or shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

5.3 Mechanics of Conversion.

5.3.1 Notice of Conversion. In order for a holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock to voluntarily convert shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock, the Series B Preferred Stock, or the Series C Preferred Stock, as the case may be (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 5.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, converted.

5.3.2 Reservation of Shares. The Corporation shall at all times when the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.

5.3.3 Effect of Conversion. All shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of

the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 5.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock, as the case may be, accordingly.

5.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

5.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock pursuant to this Section 5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

5.4 Adjustments to Conversion Price for Diluting Issues.

5.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) "**Option**" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) "**Original Issue Date**" shall mean the date on which the first share of the Series A Preferred Stock, Series B Preferred Stock, and/or the Series C Preferred Stock, as the case may be, was issued.

(c) "**Convertible Securities**" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued (or, pursuant to Subsection 5.4.3 below, deemed to be issued) by the Corporation after the Series C Original Issue Date, other than the following shares of Common Stock, and shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively "**Exempted Securities**"):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock;

(ii) shares of Common Stock issued upon conversion of the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock;

(iii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 5.5, 5.6, 5.7 or 5.8;

(iv) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;

(v) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(vi) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, brokers, or to real property lessors, pursuant to a debt financing, equipment leasing, real property leasing transaction or similar transaction, the principal purpose of which is other than the raising of capital through the sale of equity securities of the Corporation and the terms of which are approved by the Board of Directors of the Corporation;

(vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of the Corporation;

(viii) shares of Common Stock, Options or Convertible Securities issued to third parties in conjunction with services rendered, asset acquisitions, licenses of technology or strategic partnerships, the principal purpose of which is other than the raising of capital through the sale of equity securities of the Corporation and the terms of which are approved by the affirmative vote of the Board of Directors of the Corporation; or

(ix) shares of Common Stock issued or issuable in a Qualified IPO (as defined in Subsection 6.1);

5.4.2 No Adjustment of Conversion Price on Agreement of Preferred Stock Holders. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

5.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4 , are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have been obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4 (either because the consideration per share (determined pursuant to Subsection 5.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series C Original Issue Date), are revised after the Series C Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 5.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4 , the Conversion Price shall be readjusted to such Conversion Price as would have been obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Subsection 5.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 5.4.3) . If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Subsection 5.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

5.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series C Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 5.4.3), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issue, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "CP_2" shall mean the Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(b) "CP_1" shall mean the Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities

(including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

5.4.5 Determination of Consideration. For purposes of this Subsection 5.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 5.4.3, relating to Options and Convertible Securities, shall be determined by dividing

(i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

5.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Subsection 5.4.4 , and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

5.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price for the Series A Preferred Stock in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series B Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price for the Series B Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series C Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price for the Series C Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

5.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

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

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

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of the Series A Preferred Stock, Series B Preferred Stock, and/or the Series C Preferred Stock, as the case may be, simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock, as the case may be, had been converted into Common Stock on the date of such event.

5.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, had been converted into Common Stock on the date of such event.

5.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 3.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock, Series B Preferred Stock, and/or Series C Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 5.4, 5.6 or 5.7), then, following any such reorganization, recapitalization, reclassification, consolidation, or

merger each share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, immediately prior to such reorganization, recapitalization, reclassification, consolidation, or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 5 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the respective Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be.

5.9 Written Notice as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price for the outstanding shares of Preferred Stock pursuant to this Section 5, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock a written notice setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a written notice setting forth (a) the respective Conversion Price then in effect, and (b) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be.

5.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

6. Mandatory Conversion.

6.1 Trigger Events. Upon either (a) the closing of the sale of shares of

Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $5,000,000 of gross proceeds to the Corporation (a "**Qualified IPO**"), (b) the payment in full of (i) the Senior Secured Notes of the Corporation in the initial principal amount of $1,500,000 and (ii) the Senior Subordinated Notes of the Corporation in the initial principal amount of $1,000,000, (c) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock, (d) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Series B Preferred Stock, or (e) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Series C Preferred Stock. All outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) such shares may not be reissued by the Corporation upon the occurrence of (a), (b), or (c) above. All outstanding shares of Series B Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) such shares may not be reissued by the Corporation upon the occurrence of (a) or (d) above. All outstanding shares of Series C Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price and (ii) such shares may not be reissued by the Corporation upon the occurrence of (a) or (e) above. The time of such closing or payment in full of such notes or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "**Mandatory Conversion Time**."

6.2 Procedural Requirements. All holders of record of shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, pursuant to this Section 6. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. All rights with respect to the Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock converted pursuant to Section 6.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time, except only the rights of the holders thereof to receive the items provided for in the next sentence of this Subsection 6.2. As soon as practicable after the Mandatory Conversion Time for Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 5.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion, and any Accruing Dividends accrued but unpaid on the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, converted, whether or not declared, as well as any declared but unpaid dividends thereon, at the election of the Corporation, shall be paid in either cash or additional whole shares of Common Stock (with cash in lieu of fractional shares) valued at the per share price for shares of Common Stock offered to the public in the Qualified IPO, or any combination of the foregoing; provided, that if the Mandatory Conversion does not occur in connection with a Qualified IPO and the Common Stock is not actively traded on a public market, then the amount to be paid shall be determined based on the fair market value of shares of Common Stock as determined reasonably and in good faith by the Board of Directors. Such converted Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, accordingly.

7. Redemption. The Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock are not redeemable.

8. Acquired Shares. Any shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, that are acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, following redemption.

9. Waiver. Any of the rights, powers, preferences and other terms specific to the Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, set forth herein may be waived on behalf of all holders of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, by the affirmative written consent or vote of the holders of a majority of the shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, then outstanding, voting as a separate class. All other rights,

powers, preferences and other terms set forth herein may be waived on behalf of all holders of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares of Common Stock represented by the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock as if all shares of such class or series had been converted into Common Stock.

10. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock, as the case may be, shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

ARTICLE V: ADDITIONAL PROVISIONS

A. BYLAWS. Subject to any additional vote required by the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

B. NUMBER OF DIRECCTORS. Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

C. ELECTION OF DIRECTORS BY WRITTEN BALLOT. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

D. MEETINGS OF STOCKHOLDERS. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

E. LIABILITY OF DIRECTORS. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article V.E by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

F. INDEMNIFICATION. The following indemnification provisions shall apply to the persons enumerated below.

1. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "**Indemnified Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 3 of this Article V.F, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

2. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article

Tenth or otherwise.

3. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article V.F is not paid in full within thirty (30) days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

4. Indemnification of Employees and Agents. The Corporation may (but is not required to) indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney's fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

5. Advancement of Expenses of Employees and Agents. The Corporation may (but is not required to) pay the expenses (including attorney's fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

6. Non-Exclusivity of Rights. The rights conferred on any person by this Article V.F shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, the Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

7. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

8. Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article V.F; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article V.F.

9. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article V.F shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

Any amendment, repeal or modification of the foregoing provisions of this Article V.F shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

* * * *

FOUR: This Third Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation.

FIVE: This Third Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law. This Third Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law by the stockholders of the Company.

IN WITNESS WHEREOF, this Third Amended and Restated Certificate of Incorporation has been subscribed this 18th day of July, 2012 by the undersigned who affirms that the statements made herein are true and correct.

/s/ Stephen Garland

Stephen Garland, Chief Executive Officer

AMENDED AND RESTATED BYLAWS

OF

HEATWURX, INC.
(A DELAWARE CORPORATION)

Adopted: October 22, 2012
Date

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AMENDED AND RESTATED BYLAWS

OF

HEATWURX, INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place Of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("**DGCL**").

Section 5. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "**1934 Act**")) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting in accordance with the procedures below.

(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii) and must update and supplement such written notice on a timely basis as set forth inSection 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock of the corporation that are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, (5) with respect to each nominee for election or re-election to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Section 5(e) of these Bylaws, and (6) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 5(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(ii) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14(a)-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business

to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 5(b)(iv).

(iii) To be timely, the written notice required by Section 5(b)(i) or 5(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however,* that, subject to the last sentence of this Section 5(b)(iii), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(iv) The written notice required by Section 5(b)(i) or 5(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "**Proponent**" and collectively, the "**Proponents**"): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(ii)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 5(b)(i)) or to carry such proposal (with respect to a notice under Section 5(b)(ii)); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

For purposes of Sections 5 and 6, a "**Derivative Transaction**" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

(w) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation,

(x) that otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation,

(y) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or

(z) that provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(c) A stockholder providing written notice required by Section 5(b)(i) or (ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) business days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two (2) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) business days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 5(b)(iii) to the contrary, in the event that the number of directors of the Board of Directors of the corporation is increased and there is no public announcement of the appointment of a director, or, if no appointment was made, of the vacancy, made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 5(b)(iii), a stockholder's notice required by this Section 5 and that complies with the requirements in Section 5(b)(i), other than the timing requirements in Section 5(b)(iii), shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(e) To be eligible to be a nominee for election or re-election as a director of the corporation pursuant to a nomination under clause (iii) of Section 5(a), such proposed nominee or a person on such proposed nominee's behalf must deliver (in accordance with the time periods prescribed for delivery of notice under Section 5(b)(iii) or 5(d), as

applicable) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "**Voting Commitment**") that has not been disclosed to the corporation in the questionnaire or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law; (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the corporation that has not been disclosed therein; and (iii) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with, all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

(f) A person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 5(a), or in accordance with clause (iii) of Section 5(a). Except as otherwise required by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(iv)(D) and 5(b)(iv)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(g) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii) of these Bylaws.

(h) For purposes of Sections 5 and 6,

(i) "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act; and

(ii) "**affiliates**" and "**associates**" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "1933 Act").

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the authorized number of directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 5(b)(i). In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(i) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90^{th}) day prior to such meeting or the tenth (10^{th}) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c) of these Bylaws.

Section 7. Notice Of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days

before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the voting power of the shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the holders of a majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 9. Adjournment And Notice Of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of holder of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners Of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 12. List Of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action Without Meeting.

No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by electronic transmission.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer, or if no Chief Executive Officer is then serving or is absent, the President, or, if the President is absent, a Chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as Chairman. The Chairman of the Board may appoint the Chief Executive Officer as Chairman of the meeting. The Secretary, or, in his or her absence, an Assistant Secretary or other officer or other person directed to do so by the Chairman of the meeting, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters that are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 15. Number And Term Of Office. The authorized number of directors of the corporation shall not be more than seven (7) nor less than (2). Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Board of Directors

Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 18. Vacancies.

(a) Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, provided, however, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the Secretary, in his or her discretion, may either (a) require confirmation from the director prior to deeming the resignation effective, in which case the resignation will be deemed effective upon receipt of such confirmation, or (b) deem the resignation effective at the time of delivery of the resignation to the Secretary. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 20. Removal.

The Board of Directors or any individual director may be removed from office at any time (a) with cause by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of capital stock of the corporation, entitled to vote generally at an election of directors or (b) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all the then-outstanding shares of the capital stock of the corporation entitled to vote generally at an election of directors.

Section 21. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware that has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer or a majority of the authorized number of directors.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. Quorum And Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 45 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 24. Fees And Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in a resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred

Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place that has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 26. Lead Independent Director. The Chairman of the Board of Directors, or if the Chairman is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("**Lead Independent Director**"). The Lead Independent Director will: with the Chairman of the Board of Directors, establish the agenda for regular Board meetings and serve as chairman of Board of Directors meetings in the absence of the Chairman of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and perform such other duties as may be established or delegated by the Chairman of the Board of Directors.

Section 27. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary or other officer, director, or other person directed to do so by the President, shall act as secretary of the meeting.

Section 28. Duties of Chairman of the Board of Directors. The Chairperson of the Board of Directors, which position shall not be deemed to be an office of the corporation for the purposes of DGCL Section 142 (and such person shall not be deemed an officer solely by virtue of holding the office of Chairperson), when present, shall preside at all meetings of the Board of Directors. The Chairperson of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chairperson shall be appointed by the Board of Directors and may be removed at any time by the Board of Directors.

ARTICLE V

OFFICERS

Section 29. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors or committee thereof to which the Board of Directors has delegated such responsibility.

Section 30. Tenure And Duties Of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairman of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation. The Chief Executive Officer shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed

and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairman of the Board of Directors, the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors (or the Chief Executive Officer, if the Chief Executive Officer and President are not the same person and the Board of Directors has delegated the designation of the President's duties to the Chief Executive Officer) shall designate from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant (unless the duties of the President are being filled by the Chief Executive Officer). The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the controller or any assistant controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each controller and assistant controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(g) Duties of Treasurer. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation . The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, and the Chief Financial Officer (if not the Treasurer) shall designate from time to time.

Section 31. Delegation Of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 32. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 33. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 34. Execution Of Corporate Instruments. The Board of Directors may, in its discretion, determine

the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 35. Voting Of Securities Owned By The Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 36. Form And Execution Of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificate shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 37. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 38. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 39. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 40. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 41. Execution Of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 36), may be signed by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 42. Declaration Of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 43. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 44. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 45. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Executive Officers. The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "**executive officers**" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) Other Officers, Employees and Other Agents. The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to 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, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "**undertaking**"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this section or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this section, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any

action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this section to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this section or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right that such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or executive officer or officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this section.

(h) Amendments. Any repeal or modification of this section shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this section that shall not have been invalidated, or by any other applicable law. If this section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(i) The term "**proceeding**" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term "**expenses**" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the "**corporation**" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a "**director**," "**executive officer**," "**officer**," "**employee**," or "**agent**" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership,

joint venture, trust or other enterprise.

(v) References to "**other enterprises**" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "**serving at the request of the corporation**" shall include any service as a director, officer, employee or agent of the corporation that imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

ARTICLE XII

NOTICES

Section 46. Notices.

(a) Notice To Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by U.S. mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice To Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one that is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit Of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice To Person With Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 47. Amendments. Subject to the limitations set forth in Section 45(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

APPROVED AND ADOPTED this 22nd day of October, 2012

_____

Secretary

CERTIFICATE OF SECRETARY

I hereby certify that I am the Secretary of Heatwurx, Inc., and that the foregoing Bylaws, consisting of 20 pages, constitute the code of Bylaws of the Corporation, as duly adopted by unanimous written consent of the Board of Directors of the Corporation on October 22, 2012.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22th day of October, 2012.

SENIOR SECURED PROMISSORY NOTE

US $187,500.00 Date: April 15, 2011

FOR VALUE RECEIVED, the undersigned, HEATWURXAQ, INC., a Delaware corporation (the "Company"), hereby promises to pay to the order of KEARNEY PROPERTIES, LLC (the "Holder"), the principal sum of ONE HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (US $187,500.00), payable as set forth below.

This Senior Secured Promissory Note (the "Senior Note") is one of a series of senior secured promissory notes in the aggregate principal amount of $1,500,000, each of like tenor and ranking without priority over one another (collectively, the "Senior Notes"), made by the Company in favor of certain purchasers (the "Purchasers"), issued by the Company pursuant to that certain Series A Preferred Stock Purchase Agreement and Senior Secured Note Purchase Agreement dated as of April 15, 2011 by and among the Company and the Purchasers (the "Purchase Agreement"). Any payments made by the Company with respect to this Senior Note or any of the other Senior Notes shall be made to each of the Purchasers on a pro rata basis in accordance with the aggregate principal and interest owing under each of the Senior Notes then outstanding. To the extent any Purchaser of a Senior Note receives any payment in excess of its pro rata share of such payment, such amount shall be held in trust and delivered over to the Purchasers then entitled to receive such amounts. Capitalized terms used in this Senior Note and not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement.

1. Principal Payments.

(a) The "Maturity Date" of this Senior Note is October 15, 2013. The Senior Notes shall be due and payable in full on the Maturity Date. In the event that any payment to be made hereunder shall be or become due on a Saturday, Sunday or any other day which is a legal bank holiday under the laws of the State of Utah, such payment shall be or become due on the next succeeding business day.

(b) The Company shall make mandatory principal payments on the Senior Notes at the dates and in the aggregate amounts as follows, which principal payments shall be allocated among the Senior Notes on a pro rata basis:

Date of Payment	Amount of Payment
July 15, 2012	$150,000
October 15, 2012	$150,000
January 15, 2013	$150,000
April 15, 2013	$300,000
July 15, 2013	$300,000
October 15, 2013	$450,000

In addition to the foregoing mandatory principal payments, the Company may make optional principal payments at any time, which shall reduce the mandatory principal payment obligations in the reverse order of amortization.

(c) All payments hereunder shall be applied first to accrued interest and thereafter to principal. The payments of principal and interest hereunder shall be made in coin or currency of the United States of America which at the time of payment shall be legal tender therein for the payment of public and private debts.

2. Interest Payments. The Company promises to pay to the Holder interest on the principal amount hereof at a rate per annum equal to twelve percent (12%) (the "Interest Rate"), which interest shall be payable monthly in arrears commencing on May 15, 2011 and on the 15th day of each month thereafter to and including the Maturity Date. Interest shall be calculated on the basis of a year of 360 days and for the number of days actually elapsed. From and after any Event of Default hereunder, interest shall continue to accrue as provided herein at the rate of fifteen percent (15%) per annum, compounded annually (the "Default Rate").

3. Security. This Senior Note shall be secured by a first priority security interest in all of the Company's tangible and intangible assets pursuant to that certain Senior Security Agreement, among the Company and the Purchasers dated as of April 15, 2011 (the "Senior Security Agreement").

4. Subordinated Note. Concurrently with the issuance of the Senior Notes, the Company is issuing and delivering a Senior Subordinated Secured Note dated as of April 15, 2011 in the initial principal amount of $1,000,000 to Richard Giles (the "Subordinated Note"). The Subordinated Note shall be secured by a security interest, subordinate and junior to the security interest of the holders of the Senior Notes under the Senior Security Agreement, in all of the Company's tangible and intangible assets pursuant to that certain Subordinated Security Agreement between the Company and Richard Giles dated as of April 15, 2011 (the "Subordinated Security Agreement"). Any and all obligations and liabilities of the Company under the Subordinated Note, including, without limit, principal and interest payments, whether direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or to become due, now existing or later arising and whatever the amount and however evidenced, are subordinated in right of payment to any and all obligations and liabilities of the Company to the holders of the Senior Notes including, without limit, principal and interest payments, whether direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or to become due, now existing or later arising and however evidenced, together with all other sums due thereon and all costs of collecting the same (including, without limit, reasonable attorney fees) for which the Company is liable. Notwithstanding anything to the contrary in this Senior Note, the Company may make regularly scheduled payments (but not prepayments, whether voluntary, by acceleration or otherwise) of interest and principal which may come due under the Subordinated Note as and when the same become due and payable in accordance with the terms thereof; provided, however, that the Company may not make any such payments (i) if after giving effect to any such payment, a default or event of default shall have occurred and be continuing under any of the documents evidencing, securing or supporting the Senior Notes, or (ii) after a default or an event of default exists or has occurred under any of the Senior Notes, in which case, all payments on the Subordinated Notes must be suspended until such time (if ever) as the defaults or events of default under the Senior Notes have been cured and/or the Senior Notes have been paid in full.

5. No Waiver. No failure or delay by the Holder in exercising any right, power or privilege under this Senior Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law. No course of dealing between the Company and the Holder shall operate as a waiver of any rights by the Holder.

6. Waiver of Presentment and Notice of Dishonor. The Company hereby waives presentment, notice of dishonor, protest and all other demands and notices in connection with the delivery, acceptance, performance or enforcement of this Senior Note.

7. No Right to Set-Off. All payments by the Company under this Senior Note shall be made without set-off or counterclaim and free and clear and without deduction or withholding for any taxes or fees of any nature whatever, unless the obligation to make such deduction or withholding is imposed by law.

8. Place of Payment. All payments of principal of this Senior Note and the interest due hereon shall be made at the address of the Holder set forth on Exhibit A to the Purchase Agreement or at such other place as the Holder may from time to time designate in writing to the Company.

9. Events of Default. The occurrence (for any reason whatsoever and whether such happening shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) of any one or more of the following events shall constitute an event of default hereunder (each an "Event of Default" and collectively, the "Events of Default"):

   (a) if default shall be made in the due and punctual payment of the principal of any Senior Note or the interest due thereon when and as the same shall become due and payable, whether at the Maturity Date, or by acceleration or otherwise;

   (b) if default shall be made in the due and punctual payment of the principal of the Subordinated Note or the interest due thereon when and as the same shall become due and payable, whether at the Maturity Date, or by acceleration or otherwise;

(c) if the Company shall:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act;

(iii) make an assignment for the benefit of creditors;

(iv) consent to the appointment of a receiver of the whole or any substantial part of its property;

(v) on a petition in bankruptcy filed against it, be adjudicated as bankrupt; or

(vi) file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof;

(d) if a court of competent jurisdiction shall enter an order, judgment, or decree appointing, without the consent of the Company, a receiver of the whole or any substantial part of Company's property, and such order, judgment or decree shall not be vacated or set aside or stayed within 90 days from the date of entry thereof;

(e) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of the Company's property and such custody or control shall not be terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

(f) if Company shall fail to perform any material covenant or agreement required to be performed by Company under the Investors' Rights Agreement dated as of the date hereof among the Company, Purchasers and certain other stockholders of the Company, and such default is not cured within 30 days after written notice thereof is given by Purchasers to Company.

10. Remedies. Subject to the consent of Purchasers holding a majority or more of the outstanding principal balance of the Senior Notes, in case any one or more of the Events of Default specified in Section 9 hereof shall have occurred, the Holder may proceed to protect and enforce its rights either by suit in equity and/or by action at law, whether for the specific performance of any covenant or agreement contained in this Senior Note or the Senior Security Agreement or in aid of the exercise of any power granted in this Senior Note or the Senior Security Agreement or the Holder may proceed to enforce the payment of all sums due upon this Senior Note, or to enforce any other legal or equitable right of the Holder. The Company further promises to pay reasonable attorneys' fees, court costs and any other expenses, losses, charges, damages incurred or advances made by Holder in the protection of its rights or caused by the Company's default under the terms of this Senior Note.

11. Severability. In the event that one or more of the provisions of this Senior Note shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Senior Note, but this Senior Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. Amendment; Waiver. Any term, covenant, agreement or condition of this Senior Note other than those set forth in Sections 1 and 2 of this Senior Note may be amended, and compliance therewith may be waived (either generally or in a particular circumstance and either retroactively or prospectively), by one or more substantially concurrent written instruments signed by the Company and by Purchasers holding a majority or more of the outstanding principal balance of the Senior Notes. Any amendment or waiver effected in accordance with this Section 12 shall be binding upon all of the Purchasers and the Company.

13. Notices. All notices required or permitted hereunder shall be in writing and shall be

deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been send by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the following addresses or at such other address as such party may designate by ten (10) days advance written notice to the other party hereto:

If to the Company , at the following address:

HeatwurxAQ, Inc.
136 Heber Avenue, Suite 304
Park City, Utah 84060
Attn: President

If to the Holder and/or the other Purchasers, at the addresses set forth on Exhibit A to the Purchase Agreement.

14. Governing Law. This Senior Note and the rights and obligations of the Company and the Holder shall be governed by and construed in accordance with the laws of the State of Utah, regardless of the law that might be applied under principles of conflicts of law.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Senior Note to be executed and delivered on the date first written above.

HEATWURXAQ, INC.

By: /s/Larry Griffin
Title: CFO, President

HEATWURXAQ, INC.
PERFORMANCE STOCK OPTION GRANT NOTICE

HeatwurxAQ, Inc. (the "***Company***"), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Option Agreement dated as of the date hereof which are attached hereto and incorporated herein in its entirety.

Optionholder:	Richard Giles
Date of Grant:	April 15, 2011
Number of Shares Subject to Option:	200,000
Exercise Price (Per Share):	$0.40
Total Exercise Price:	$80,000
Expiration Date:	April 14, 2018

Type of Grant: Performance Stock Options

Exercise Schedule: From date of vesting through April 14, 2018.

Vesting Schedule: The options for the shares will vest in full on the occurrence of any one of the following: (A) the Company achieves total revenue for Year 2 of $24,750,000 (determined in accordance with generally accepted accounting principles); (B) the Company achieves total revenue for Year 3 of $49,500,000 (determined in accordance with generally accepted accounting principles); or (C) the Company achieves total revenue for Year 4 of $99,000,000 (determined in accordance with generally accepted accounting principles). If the options do not vest as provided in this Vesting Schedule, they will immediately terminate and expire.

Additional Terms/Acknowledgements: The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice and the Option Agreement. Option holder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice and the Option Agreement set forth the entire understanding between Optionholder and the Company regarding options to purchase stock in the Company and supersede all prior oral and written agreements on that subject.

HEATWURXAQ, INC.

By: /s/ Larry Griffin
Title: CFO, President
Date: 4/15/2011

OPTIONHOLDER:

/s/ Richard Giles
Signature

Date: 4/15/2011

ATTACHMENT: Performance Stock Option Agreement

HEATWURXAQ, INC.

INVESTORS' RIGHTS AGREEMENT

This Investors' Rights Agreement (the " **Agreement**") is made as of April 15, 2011, by and among HeatwurxAQ, Inc., a Delaware corporation (the "**Company**") and the investors listed on Exhibit A hereto (each, an "**Investor**" and collectively, the "**Investors**").

RECITALS:

WHEREAS, the Company and the Investors are parties to the Series A Preferred Stock Purchase Agreement and Senior Secured Notes Purchase Agreement of even date herewith (the "**Purchase Agreement**"); and

WHEREAS, in order to induce the Investors to invest funds in the Company pursuant to the Purchase Agreement, the Company and the Investors hereby agree that this Agreement shall govern the rights of the Investors to cause the Company to register shares of Common Stock issued or issuable to them, to receive certain information from the Company, to participate in future equity offerings by the Company, and certain other matters as set forth herein.

AGREEMENT:

The parties hereby agree as follows:

1. Definitions . In addition to the terms defined elsewhere in this Agreement, the following terms used in this Agreement shall be construed to have the meanings set forth below:

1.1 "**Affiliate**" means, with respect to any specified Person, any other Person who or which, directly or indirectly, controls, is controlled by, or is under common control with such specified Person, including without limitation any general partner, officer, director or manager of such Person and any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

1.2 "**Common Stock**" means shares of the Company's common stock, $0.001 par value per share.

1.3 "**Damages**" means any loss, damage, or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, or liability (or any action in respect thereof) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

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

1.5 **"Excluded Registration"** means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan ; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.6 "**Form S-1**" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.7 "**Form S-2**" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.8 "**Form S-3**" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.9 "**GAAP**" means generally accepted accounting principles in the United States.

1.10 "**Holder**" means any holder of Registrable Securities who is a party to this Agreement.

1.11 **"Immediate Family Member"** means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, of a natural person referred to herein.

1.12 "**Initiating Holders**" means, collectively, Holders who properly initiate a registration request under this Agreement.

1.13 **"IPO"** means the Company's first underwritten public offering of its Common Stock under the Securities Act.

1.14 "**Key Employee**" means any executive-level employee as well as any employee who, either alone or in concert with others, develops, invents, programs, or designs any of the Company's Intellectual Property (as defined in the Purchase Agreement).

1.15 "**Major Investor**" means any Investor that, individually or together with such Investor's Affiliates, holds at least 50,000 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

1.16 "**New Securities**" means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

1.17 **"Person"** means any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.18 "**Preferred Stock**" means, collectively, shares of the Company's Series A Preferred Stock.

1.19 "**Registrable Securities**" means (i) the Common Stock issuable or issued upon conversion of the Preferred Stock; (ii) any Common Stock **,** or any Common Stock issued or issuable (directly or indirectly) upon conversion and/or exercise of any other securities of the Company , acquired by the Investors after the date hereof; and (iii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (i) and (ii) above; excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Section 6.1, and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Section 2. 13 of this Agreement.

1.20 "**Registrable Securities then outstanding**" means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/ or convertible securities that are Registrable Securities.

1.21 "**Restricted Securities**" means the securities of the Company required to bear the legend set forth in Section 2. 12(b) hereof.

1.22 "**SEC**" means the Securities and Exchange Commission.

1.23 "**SEC Rule 144**" means Rule 144 promulgated by the SEC under the Securities Act.

1.24 "**SEC Rule 145**" means Rule 145 promulgated by the SEC under the Securities Act.

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

1.26 "**Selling Expenses**" means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disburse ments of

counsel for any Holder.

1.27 "**Series A Preferred Stock**" means shares of the Company's Series A Preferred Stock, $0.001 par value per share.

2. Registration Rights. The Company covenants and agrees as follows:

2.1 Demand Registration.

(a) Form S-1 Demand. If at any time after one hundred eighty (180) days after the effective date of the registration statement for the IPO, the Company receives a request from Holders of at least forty percent (40%) of the Registrable Securities then outstanding that the Company file a Form S-1 registration statement with respect to the Registrable Securities then outstanding, then the Company shall (i) within ten (10) days after the date such request is given, give notice thereof (the "**Demand Notice**") to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days after the date of the Demand Notice is given, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from Holders of at least forty percent (40%) of the Registrable Securities then outstanding that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days after the date the Demand Notice is given, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(c) Notwithstanding the foregoing obligations, if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.1, a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Board of Directors of the Company, it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, then the Company shall have the right to defer taking action with respect to such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders; provided, however, that the Company may not utilize this right more than once in any twelve-month period, and provided, further, that the Company shall not register any securities for the account of itself or any other stockholder during such 120-day period (other than pursuant to an Excluded Registration).

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 2.1(a) (i) during the period that is ninety (90) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing, in good faith, commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected two (2) registrations pursuant to Section 2.1(a); or (iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.1(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(b) (i) during the period that is thirty (30) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing, in good faith, commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two (2) registrations pursuant to Section 2.1(b) within the twelve (12) month period immediately preceding the date of such request .. A registration statement shall not be counted as "effected" for purposes of this Section 2.1(d) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Section 2.6, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Section 2.1(d).

2.2 Company Registration. If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for stockholders other than the Holders) any of its securities under the Securities Act in connection with the public offering of such securities solely for cash (other than pursuant to an Excluded Registration), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company, the Company shall, subject to the provisions of Section 2.3, use its commercially reasonable efforts to cause to be registered under the Securities Act all of the Registrable Securities

that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 prior to the effectiveness of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such registration shall be borne by the Company, in accordance with Section 2.6 hereof.

2.3 Underwriting Requirements.

(a) If, pursuant to Section 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.1, and the Company shall include such information in the Demand Notice . The underwriter (s) will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.4 (e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Section 2.3, if the managing underwriter advises the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders ; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares.

(b) In connection with any offering involving an underwriting of shares of the Company's capital stock pursuant to Section 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares. Notwithstanding the foregoing, in no event shall (i) the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering, or (ii) the number of Registrable Securities included in the offering be reduced below twenty percent (20%) of the total number of securities included in such offering, unless such offering is the IPO, in which case the selling Holders may be excluded further if the underwriters make the determination described above and no other stockholder's securities are included in such offering. For purposes of the provision in this Section 2.3 (b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution described in such registration statement is completed; provided, however, that such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common

Stock (or other securities) of the Company, from selling any securities included in such registration;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the provisions of the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate the disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already qualified to do business or subject to service of process in that jurisdiction;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriters of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on each national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any underwriters participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings or qualifications pursuant to Section 2, including, without limitation, all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company, and the reasonable fees and disbursements, not to exceed $25,000, of one counsel for the selling Holders selected by them shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one demand registration pursuant to Section 2.1(a) or Section 2.1(b), as the case may be; provided further, that if, at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business or prospects of the Company from that known to the Holders at the time of the request and have withdrawn the request with reasonable promptness after becoming aware of such material adverse change, then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Section 2.1(a) or Section 2.1(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration pursuant to this Agreement as the

result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. In the event any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8 (a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8 (b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall any indemnity under this Sections 2.8 (b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder) , except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.8 , give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.8, to the extent that such failure materially prejudices the indemnifying party's ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.8.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Section 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Section 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Section 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties'

relevant intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case, (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further, that in no event shall a Holder's liability pursuant to this Section 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Section 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Section 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under the Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder (i) to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included or (ii) to demand registration of any securities held by such holder or prospective holder; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Section 6.9.

2.11 "Market Stand-off" Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the Company of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1, Form S-2 or Form S-3, and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days, which period may be extended upon the request of the managing underwriter for an additional period of up to fifteen (15) days if the Company issues or proposes to issue an earnings or other public release within fifteen (15) days of the expiration of the 180-day lockup period), (i) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock held immediately before the effective date of the registration statement for such offering or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities , whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Section 2.11 shall not apply to the sale of any shares to an underwriter

pursuant to an underwriting agreement, and shall be applicable to the Holders only if all officers and directors are subject to the same restrictions. The underwriters in connection with such registration are intended third-party beneficiaries of this Section 2.11 and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 2.11 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Holders subject to such agreements, based on the number of shares subject to such agreements.

2.12 Restrictions on Transfer .

(a) The Preferred Stock and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Preferred Stock and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate or instrument representing (i) the Preferred Stock , (ii) the Registrable Securities, and (iii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Section 2.12 (c)) be stamped or otherwise imprinted with a legend substantially in the following form:

> THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.
>
> THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Section 2.12.

(c) The holder of each certificate representing Restricted Securities, by acceptance thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder's intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder's expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a "no action" letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or "no action" letter (x) in any transaction in compliance with SEC Rule 144 or (y) in any transaction in which such Holder distributes Restricted Securities to an Affiliate of such Holder for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Section 2.12. Each certificate or instrument evidencing the Restricted Securities transferred as above provided shall bear, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Section 2.12 (b), except that such certificate shall not bear such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Section 2.1 or

Section 2.2 shall terminate upon the earliest to occur of (a) the closing of a Deemed Liquidation Event (as such term is defined in the Company's Certificate of Incorporation); (b) when all of such Holder's Registrable Securities could be sold without restriction under SEC Rule 144; and (c) the third (3rd) anniversary of the IPO.

3. Information Rights.

3.1 Delivery of Financial Statements. The Company shall deliver to each Major Investor (other than a Major Investor reasonably determined by the Board of Directors of the Company to be a competitor of the Company):

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company, (i) a balance sheet as of the end of such year , (ii) statements of income and of cash flows for such year , and (iii) a statement of stockholders' equity as of the end of such year , all such financial statements audited by independent public accountants of regionally recognized standing selected by the Company , or unaudited, if the Board of Directors of the Company has not yet approved the engagement of an auditor for the Company; provided, that such financial statement shall not be audited for the year ending December 31, 2011; and

(b) as soon as practicable, but in any event within thirty (30) days after the end of each of the first three (3) quarters of the fiscal year of the Company, unaudited statements of income and of cash flows for such fiscal quarter and for the fiscal year-to-date, and an unaudited balance sheet and statement of stockholders' equity as of the end of such fiscal quarter and for the fiscal year-to-date, all prepared in accordance with GAAP (except that such financing statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP).

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Section 3.1 to the contrary, the Company may cease providing the information set forth in this Section 3.1 during the period starting with the date sixty (60) days before the Company's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering ; provided that the Company's covenants under this Section 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a competitor of the Company), at such Major Investor's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers and independent auditors, during normal business hours of the Company as may be reasonably requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Section 3.2 to provide access to any information that it reasonably considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.3 Termination of Information Rights . The covenants set forth in Section 3.1 and Section 3.2 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event (as such term is defined in the Company's Certificate of Incorporation), whichever event occurs first.

3.4 Confidentiality . Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 3.4 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Section 3.4; or (iii) as may otherwise be required by law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

4. Rights to Future Stock Issuances .

4.1 Right of First Offer . Subject to the terms and conditions of this Section 4.1 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Investor. An Investor shall be entitled to apportion the right of first offer hereby granted to it among itself and its Affiliates in such proportions as it deems appropriate.

(a) The Company shall give notice (the "**Offer Notice**") to each Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities .

(b) By notification to the Company within fifteen (15) days after the Offer Notice is given (the "**Offer Period**"), each Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of the New Securities equal to such Investor's pro rata equity interest in the Company (provided, for purposes of this Section 4.1, an Investor's "pro rata equity interest," shall mean the ratio of (A) the total number of shares of Common Stock held by such Investor (assuming full conversion and exercise of all securities held by the Investor then convertible into or exercisable for shares of Common Stock) to (B) the total number of shares of Common Stock then outstanding (assuming full conversion and exercise of all securities then convertible into or exercisable for shares of Common Stock). The closing of any sale pursuant to this Section 4.1(b) shall occur within the later of one hundred fifteen (115) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Section 4.1(c) .

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Section 4.1(b), the Company may, during the 100-day period following the expiration of the period provided in Section 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such 100-day period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Investors in accordance with this Section 4.1.

(d) The right of first offer in this Section 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Company's Certificate of Incorporation); and (ii) shares of Common Stock issued in the IPO .

(e) Notwithstanding the foregoing, in the event of a sale of New Securities to which the right of first offer set forth in this Section 4.1 is applicable and with respect to which all investors are to be "accredited investors", as defined in Regulation D promulgated under the Securities Act, any Investor that is not an accredited investor may be excluded from such sale in the discretion of the Company.

4.2 Termination . The covenants set forth in Section 4.1 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO , (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event (as such term is defined in the Company's Certificate of Incorporation), whichever event occurs first.

5. Miscellaneous.

5.1 Successors and Assigns . The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate, partner, member, limited partner, retired partner, retired member, or stockholder of a Holder; (ii) is a Holder's Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder's Immediate Family Members; or (iii) after such transfer, holds at least 100,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations); provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Section 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate, limited partner, retired partner, member, retired member, or stockholder of a Holder; (2) who is a Holder's Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member shall be aggregated together and with those of the transferring Holder; provided further that all transferees who would not qualify individually for assignment of rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this

Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

5.2 Governing Law . This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

5.3 Counterparts ; Facsimile . This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.4 Titles and Subtitles . The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

5.5 Notices . All notices, requests, and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given , delivered and received (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one business day after the business day of deposit with a nationally recognized overnight courier, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their addresses as set forth on Schedule A hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such e-mail address, facsimile number, or address as subsequently modified by written notice given in accordance with this Section 5.5.

5.6 Amendments and Waivers . Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the holders of a majority of the Registrable Securities then outstanding; provided that the Company may in its sole discretion waive compliance with Section 2.12 (c) (and the Company's failure to object promptly in writing after notification of a proposed assignment allegedly in violation of Section 2.12 (c) shall be deemed to be a waiver) ; and provided further that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party . Notwithstanding the foregoing, this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction). The Company shall give prompt notice of any amendment or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, termination, or waiver. Any amendment, termination, or waiver effected in accordance with this Section 5.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

5.7 Severability . In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

5.8 Aggregation of Stock . All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

5.9 Additional Investors . Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company's Preferred Stock after the date hereof, whether pursuant to the Purchase Agreement or otherwise, any purchaser of such shares of Preferred Stock may become a party to this Agreement by executing and delivering an additional

counterpart signature page to this Agreement, and thereafter shall be deemed an "Investor" for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor , so long as such additional Investor has agreed in writing to be bound by all of the obligations as an "Investor" hereunder.

5.10 Entire Agreement . This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

5.11 Delays or Omissions . No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

[Signature Pages Follow]

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

COMPANY:

HEATWURXAQ, INC.

By: /s/ Larry Griffin
Title: CFO, President

INVESTORS:

SAN GABRIEL FUND, LLC

By: /s/ Justin Yorke
Title: Manager

JMW FUND, LLC

By: /s/ Justin Yorke
Title: Manager

[_____]

By: _____
Title: _____

[_____]

By: _____
Title: _____

EXHIBIT A

SCHEDULE OF INVESTORS

Name and Address

San Gabriel Fund, LLC
4 Richland Place
Pasadena, CA 91103
Attn: Justin Yorke

JMW Fund, LLC
4 Richland Place
Pasadena, CA 91103
Attn: Justin Yorke

[Name]

[Name]

PLEDGE AGREEMENT

PLEDGE AGREEMENT, dated as of April 15, 2011, between DAVID J. EASTMAN ("Pledgor") and JUSTIN YORKE ("Purchasers' Representative").

Recitals

A. Pursuant to that certain Series A Preferred Stock Purchase Agreement and Senior Secured Loan Purchase Agreement dated as of the date hereof between HeatwurxAQ, Inc., a Delaware corporation (the "Company"), and the Purchasers named therein (the "Purchase Agreement"), Purchasers have agreed to make a loan to the Company evidenced by the Senior Secured Promissory Note issued by the Company in the aggregate principal amount of $1,500,000 (the "Senior Note"). As provided in the Purchase Agreement, Purchasers' Representative has been designated as the representative of the Purchasers.

B. Pledgor is the record and beneficial owner of 100,000 shares of Common Stock $.001 par value, of the Company (the "Pledged Shares").

C. In order to induce Purchasers to make the loan as provided for in the Purchase Agreement, Pledgor has agreed to pledge the Pledged Shares to Purchasers' Representative (as agent for Purchasers) and to grant Purchasers' Representative (as agent for Purchasers) the right to purchase the Pledged Shares in accordance herewith.

Agreement

In consideration of the premises and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Pledge. Pledgor hereby pledges to Purchasers' Representative (as agent for Purchasers), and grants to Purchasers' Representative (as agent for Purchasers) a first priority security interest in, the Pledged Shares and the certificates representing the Pledged Shares, as security for payment of the Senior Note. All certificates evidencing the Pledged Shares shall be delivered to and held by Purchasers' Representative (as agent for Purchasers) pursuant hereto. The Pledgor will notify the Company to add a notation to the stock registry book of the Company, containing a notation stating that the Pledged Shares have been pledged in favor of the Purchasers' Representative, and will cause to be delivered to the Purchasers' Representative a certificate signed by the Secretary of the board of directors of the Company indicating that such pledge has been registered as provided herein and that the Secretary is aware of the contents of this Agreement.

2. Defaults and Remedies. If the Company is in default in making any mandatory payment of principal on the Senior Note, and such default is not cured within 15 days after written notice from Purchasers' Representative to the Company and Pledgor, Purchasers' Representative is hereby authorized and empowered to transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Shares, to sell in one or more sales after thirty (30) days' notice of the time and place of any public sale or of the time at which a private sale is to take place (which notice Pledgor agrees is commercially reasonable) the whole or any part of the Pledged Shares and to otherwise act with respect to the Pledged Shares as though Purchasers' Representative was the outright owner thereof. Any sale shall be made at a public or private sale at Purchasers' Representative's place of business, or at any place to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Purchasers' Representative may deem fair, and Purchasers' Representative (as agent for Purchasers) may be the purchaser of the whole or any part of the Pledged Shares so sold. Each sale shall be made to the highest bidder, but Purchasers' Representative reserves the right to reject any and all bids at such sale that, in its discretion, it shall deem inadequate.

3. Proxy; Voting. Pledgor hereby irrevocably constitutes and appoints Purchasers' Representative as the proxy and attorney-in-fact of Pledgor with respect to the Pledged Shares, including the right to vote the Pledged Shares, with full power of substitution to do so. The appointment of Purchasers' Representative as proxy and attorney-in-fact is coupled with an interest and shall be irrevocable until the termination date. In addition to the right to vote the Pledged Shares, the appointment of Purchasers' Representative as proxy and attorney-in-fact shall include the right to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Shares would be entitled (including giving or withholding written consents of stockholders, calling special meetings of stockholders and voting at such meetings). Such proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Shares on the record books of the Company) by any person. Notwithstanding the foregoing, Purchasers' Representative shall not have any duty to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so. Notwithstanding the foregoing, Purchasers' Representative agrees that until the occurrence of an Event of Default under the Senior Note, Purchasers' Representative shall vote the Pledged Shares in accordance with the provisions of the Voting Agreement dated as of April 15, 2011 among the Company, Pledgor, Purchaser and other stockholders of the Company.

4. Power of Attorney. The Pledgor hereby irrevocably appoints the Purchasers' Representative

as the Pledgor's special attorney-in-fact, with full authority in the place and stead of the Pledgor and in the name of the Pledgor or otherwise, from time to time in the Purchasers' Representative's discretion, to take any action and to execute any instrument that the Purchasers' Representative may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) to ask for, demand, collect, sue for, recover, compromise, receive and give acquaintance and receipts for moneys due and to become due under or in respect of any of the Collateral,

(b) to receive, endorse and collect any drafts or other instruments and documents in connection with clause (a) above, and

(c) to file any claims or take any action or institute any proceedings that the Purchasers' Representative may deem necessary or desirable for the collection of any of the Collateral in terms of this Agreement, or otherwise to enforce compliance with the rights of the Purchasers' Representative with respect to any of the Collateral.

5. Indemnity and Expenses.

(a) The Pledgor agrees to pay on demand all reasonable and documented out-of-pocket costs and expenses of the Purchasers' Representative in connection with the enforcement of this Agreement and any proceeding ancillary thereto (including, without limitation, the reasonable and documented fees and expenses of counsel for the Purchasers' Representative).

(b) The Pledgor agrees to indemnify and hold harmless the Purchasers' Representative, and each of its affiliates and their officers, directors, employees, agents and advisors (each, an "**Indemnified Party**") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable and documented fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any litigation or proceeding or preparation of a defense in connection therewith) this Agreement, any of the transactions contemplated herein, except to the extent such claim, damage, loss, liability or expense results from such Indemnified Party's gross negligence or willful misconduct.

6. Termination. This Pledge Agreement and the pledge of the Pledged Shares to Purchasers' Representative and the right to purchase the Pledged Shares shall terminate upon payment in full of the Senior Notes. Immediately following the Termination, Purchasers' Representative shall deliver the Pledged Shares to Pledgor, free and clear of the liens hereof and all of Pledgor's obligations hereunder shall terminate at such time.

7. Notices

. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim or other communication hereunder will be deemed duly given (a) upon delivery, if delivered personally to the recipient or (b) upon the first business day after the date sent, if sent to the intended recipient by reputable express courier service (charges prepaid) and addressed to the intended recipient as set forth below:

If to Pledgor, to:

David J. Eastman
136 Heber Avenue, Suite 304
Park City, Utah 84060

If to Purchasers' Representative, to:

Justin Yorke
4 Richland Place
Pasadena, CA 91103

Any party hereto may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set forth above using any other means, but no such notice, request, demand, claim or other communication will be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party hereto may change the address (or add new parties and their addresses) to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth in this Section 7.

8. Successors and Assigns. This Agreement and all obligations of Pledgor hereunder shall be binding upon the successors and assigns of Pledgor and shall, together with the rights and remedies of Purchasers' Representative hereunder, inure to the benefit of Purchasers' Representative and its successors and assigns; provided, that except as specifically provided in this Agreement Purchasers' Representative may not assign, sell, hypothecate or otherwise transfer any interest in or rights under this Agreement or in the Pledged Shares.

9. Counterparts. This Agreement may be executed in any number of separate counterparts, each

of which shall collectively and separately constitute one agreement.

10. Complete Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior drafts, understandings, agreements or representations by or among the parties written or oral, which may have related to the subject matter hereof in any way.

11. Further Instruments. At any time and from time to time, the Pledgor shall promptly execute and deliver further instruments and documents, and take all further action, that may be necessary or that the Purchasers' Representative may reasonably request, in order to perfect and protect the security interest granted hereby, or to enable the Purchasers' Representative to exercise its rights and remedies hereunder.

12. Governing Law. This Agreement will be governed by and construed in accordance with the domestic laws of the State of Utah, without giving effect to the choice of law provisions thereof.

13. Amendment and Waiver. The provisions of this Agreement may be amended and waived only with the prior written consent of Pledgor and Purchasers' Representative, and no course of conduct or failure or delay in enforcing the provisions of this Agreement will affect the validity, binding effect or enforceability of this Agreement or any provision hereof.

14. Severability; Reformation. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue to full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

[Signature Page Follows]

In Witness Whereof, Pledgor and Purchasers' Representative have executed and delivered this Pledge Agreement as of the date first set forth above.

PLEDGOR:

/s/ David Eastman
David J. Eastman

PURCHASERS' REPRESENTATIVE:

/s/ Justin Yorke
Justin Yorke

HeatwurxAQ, Inc. 136 Heber Avenue, Suite 304 Park City, Utah 84060

April 15,2011

Richard Giles 6300 Sagewood Drive, Suite 400 Park City, Utah 84098

Dear Richard:

This letter agreement (this "Agreement") sets fOl1h our agreement with you, as one of the founders of the Company, with respect to your engagement as a consultant for HeatwurxAQ, Inc., a Delaware corporation (the "Company").

1. Engagement. You will provide consulting services to the Company upon the terms and conditions set fOl1h in this Agreement for the period beginning on the date hereof and ending as provided in Section 4 (the "Consulting Period").

2. Position and Duties. During the Consulting Period, you will devote such pOl1ion of your working time and attention (but not less than 40% of your working time and attention) as may reasonably be required to carry out the consulting and advisory services assigned to you in good faith by the Company's Board of Directors (the "Board") including serving as the Executive Chairman of the Company. During the Consulting Period you will not, without the prior written consent of the Board, act as manager or enter into any consulting or employment arrangements with any other entity if such activities violate the non-competition provisions set forth in this Agreement or constitute more Ihan sixty percent (60%) of your working time and attention in the aggregate. Subject to the foregoing, for purposes of clarification you will be permitted to: (a) engage in construction and construction related activities including construction projects utilizing heatwurx machinery and equipment; and (b) provide consulting services to others.

3. Compensation and Benefits.

(a) You will be entitled to receive an annualized base compensation for your consulting services during calendar year 2011 of $75,000 per year (the "Base Compensation). The Base Compensation will be payable monthly. The Base Compensation will be increased by ten percent (10%) on January I of each year during the Consulting Period, commencing on January 1,20 J2.

(b) In addition, during the Consulting Period, you will be eligible to receive a bonus as set forth on Exhibit A attached hereto (your "Annual Bonus").

(c) The Company agrees to reimburse you for all reasonable out-of-pocket business expenses incurred by you in the performance of your duties hereunder, provided that yon properly account to the Company for all such expenses in accordance with the rules and regulations of the Internal Revenue Service, and in accordance with the policies of the Company relating to reimbursement of business expenses.

4. Term: Termination. The Consulting Period will end on the second anniversary of the date hereof; provided, however, that the Consulting Period will be automatically renewed for successive one-year periods unless either you or the Board gives the other written notice at least 30 days, but not more than 180 days, prior to the end of the then-effective Consulting Period of an intention not to renew (a "Notice of Non-Renewal"), in which case the Consulting Period will end at the conclusion of the theneffective Consulting Period. Notwithstanding the foregoing, the Consulting Period (a) will terminate prior to such date upon your death or Disability (as defined in Section 50) below), (b) may be terminated by you at any time prior to such date for Good Reason (as defined in Section 5(k) below) or without Good Reason, and (c) may be terminated by the Company at any time prior to such date for Cause (as defined in Section 5(i) below) or without Cause.
5. Termination Payments.

(a) If the Consulting Period is terminated (i) by the Company without Cause, (ii) by you for Good Reason or (iii) by the Company by delivering a Notice of Non-Renewal to you, you will be entitled to receive, subject to the provisions of Section 5(b) below, (A) your Base Compensation to the extent such amount has accrued through the Termination Date and remains unpaid, and (B) a pro rated (based on the percentage of the applicable calendar year in which you were engaged by the Company) portion of the Annual Bonus which would otherwise be payable to you under this Agreement for the calendar year in which the Consulting Period is terminated, payable at the same time as if you had remained continuously engaged by the Company (the "Pro-rated Bonus").

(b) The following will apply to the payments required under Section 5(a):

(i) To the extent any such cash payment to be provided is not nonqualified deferred compensation subject to Code Section 409A, as determined by the Company in its sole discretion, then such payment will commence immediately following the termination hereof. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(ii) To the extent any such cash payment to be provided is nonqualified deferred compensation subject to Code Section 409A, as determined by the Company in its sole discretion, then such payment or benefit will commence or be made upon the 60th day following your termination. The first such cash payment will include payment of all amounts that otherwise would have been due prior thereto under Section 5(a) had such payments commenced immediately upon your termination, and any payments made thereafter will continue as otherwise provided herein.

(c) If the Consulting Period is terminated by the Company for Cause or by you without Good Reason, the Company will pay you your Base Compensation only to the extent such amount has accrued through the Termination Date in accordance with normal payroll practices of the Company as in effect on such date. Upon delivery of the payment described in this Section 5(c), the Company will have no fmiher obligation to you under this Agreement.

(d) If the Consulting Period is terminated upon your death or Disability, the Company will pay you (i) your Base Compensation only to the extent such amount has accrued through the Termination Date in accordance with normal payroll practices of the Company as in effect on such date and (ii) the Pro-rated Bonus.

(e) Except as otherwise required by law or as specifically provided herein, all of your rights to payments hereunder (if any) accruing after the termination of the Consulting Period will cease upon such termination. In the event the Consulting Period is terminated by the Company without Cause, by you for Good Reason or by the Company by delivering a Notice of Non-Renewal to you, your

sole remedy and the sole remedy of your successors, assigns, heirs, representatives, owners and estate under this Agreement will be to receive the payments described in Section 5(a). In the event the Consulting Period is terminated by the Company for Cause or by you without Good Reason, your sole remedy and the sole remedy of your successors, assigns, heirs, representatives, owners and estate under this Agreement will be to receive the payment described in Section 5(c). **I n** the event the Consulting Period is terminated upon your death or Disability, your sole remedy and the sole remedy of your successors, assigns, heirs, representatives, owners, and estate under this Agreemeut will be to receive the payments described in Section 5(d). The payments under this Section 5 shall be in full and complete satisfaction of your rights under this Agreement and any other claims you may have in respect of your engagement by the Company or any Affiliate, and you acknowledge that such amounts are fair and reasonable, and your sole and exclusive remedy, in lieu of all other remedies at law or in equity, with respect to the termination of your engagement hereunder.

(I) Any termination of the Consulting Period by the Company or by you (other than termination upon your death) must be communicated by written "Notice of Termination" to the other party hereto. "Termination Date" means (i) if the Consulting Period is terminated by your death, the date of your death, (ii) if the Consulting Period is terminated upon your Disability, the datc specified in the Notice ofTennination (which may not be earlier than the date of such Notice) given by the Board after it has determincd your Disability, (iii) ifthc Consulting Pcriod is tcrminated by thc Company or by you for any othcr reason, thc datc spccificd in thc Noticc of Termination (which may not be earlicr than thc datc of such Noticc); provided that a Noticc of Non-Renewal shall be dcemed a Noticc of Termination and thc Termination Date shall be the last day of then-cffectivc Consulting Period (unlcss such Notice provides otherwise).

(g) Provisions of this Agreement will survive any termination if so provided in this Agreement or if necessary or desirable to accomplish the purposes of other surviving provisions, including without limitation your obligations under Sections 6, 7, and 8 of this Agreement.

(h) "Affiliate" of any particular Person means any othcr Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of thc power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

(i) "Cause" means (i) a brcach by you of this Agreement, (ii) your conviction of, guilty or no contest pica to, or confession of gni)t of, a fclony, (iii) fraudulcnt, dishoncst or illegal conduct by you in the performance of scrvices for or on behalf of thc Company or any of its Affiliates or othcr conduct materially detrimental to the business, opcrations or reputation of the Company or any of its Affiliates, rcgardless of whether such conduct is within the scope of this Agreement, (iv) your misappropriation of funds, or (v) your gross ncgligence, willful misconduct or failure to materially perform in any material respcct your obligations under this Agreement; provided, however, that thc matters described in clause (i) and (v) above shall constitute Cause only if thc Company notifies you in writing of matters constituting such Cause and you fail to cure such matters within ten business days of receipt of such written notice or if two or more violations of clause (i) or (v) occur during any twelve month period.

UI "Disability" means any accident, sickness, incapacity or other physical or mental disability which prevents you from performing scrvices undcr this Agreement for either (i) 90 consecutivc days or (ii) 120 days during any period of365 consecutive days, in each case, as determincd in good faith by the Board after having had consultation with any medical expert selected by the Board from a list of three medical expelts provided by you.

(k) "Good Reason" means (i) a failure by the Company to make any payments under this Agreement to you when due, (ii) any other material breach by the Company of this Agreement, (iii) any reduction of your Base Compensation as in effect immediately prior to such reduction, or (iv) the Company requires you to work out of any location other than the gcneral Salt Lake City and Park City, Utah area; provided, however, that above shall constitnte Good Reason only if you notify the Company in writing of the matters constituting such Good Reason and the Company fails to cure such matters within ten business days of receipt of such written notice; provided further, however, in no event will a condition give rise to Good Reason hereunder unless, within 45 days after you know of said condition, you will have actually terminated your engagement with the Company by giving written notice of resignation for failure of the Company to remedy such condition. For clarity, if this Agreemeut terminates because you delivered a Notice of Non-Renewal such termination shall be deemed to be a termination by you without Good Reason.

(l) "Person" means an individual, a p8l1nership, a corporation, a limited liability company, an association, a joint stock company, a trllst, a joint venture, an unincorporated organization and a governmental entity or any dep8l1ment, agency or political subdivision thereof.

(m) "Subsidiary" meaus, with respect to any Persou, any corporation, limited liability company, partnership, association or other business entity of which (i) 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 that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, pm1nership, association or othcr business entity, a majority of the pal1nership or other similar ownership interest thereof is at the time owncd or controlled, directly or indirectly, by any Persou or one or more Subsidiaries of that Person or a combination thereof.

6. Confidential Information.

(a) You will not disclose or use at any time during the Non-Compete Period (as defined in Section 8(b)) or thereafter any Confidential Information (as defined below), whether or not such information is developed by you, except to the extent that such disclosure or use is required in the performance or exercise by you in good faith of (i) the services described in this Agreement, (ii) rights as a director or shareholder of the Company or its Affiliates, or (iii) rights under any agreement with the Company or its Affiliates.

(b) You will deliver to the Company at the tcrmination of the Consulting Period, or at any time the Company may request, all memoranda, notcs, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) that is Confidential Information or Work Product (as defined below) or information relating to the business of the Company or its Affiliates which you may then possess or have under your control.

(c) As used in this Agrecment, the tcrm "Confidential Information" means information that is not generally known or available to the public and that is used, developed or obtained by the Company or its Affiliates in connection with their businesses, including but not limited to (i) information, observations and data concerning the business or affairs of the Company or its Affiliates, (ii) products or services, (iii) fees, costs and pricing structures, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bascs, (x) acconnting and bnsiness methods, (xi) inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not rednced to practice, (xii) customers and clients and cllstomer or c1icnt

lists, (xiii) other copyrightable works, (xiv) all production methods, processes, technology and trade secrets, and (xv) all similar and related information in whatever form.

(d) Notwithstanding the provisions of this Agreement to the contrary, you will have no liability to the Company for disclosure of Confidential Information if the Confidential Information:

(i) is known to the receiving party at the time of disclosure of such Confidential Information by you to the receiving patty other than as the result of a breach of this Section 6 by you;

(ii) becomes publicly known or is disclosed by the Company or any Subsidiary of the Company other than as the result of a breach of this Section 6 by you; or

(iii) is required to be disclosed by law, court order, or similar compulsion or in connection with any legal proceeding; provided that such disclosure will be limited to the extent so required and, subject to thc requirements of law, you will give the Company notice of your intent to so disclose such Confidential Information and will reasonably cooperate with the Company in seeking suitable confidentiality protections.

7. Right of First Refusal. You hereby grant to the Company a right of first refusal with respect to all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable) which are conceived, developed or made by you (whether or not during usual business hours and whether or not alone or in conjunction with any other person) during the Consulting Period together with all patent applications, lellers patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thercof that may be granted for or upon any of the foregoing (collectively, the "IP"). The right of first refusal granted hereby may be exercised by the Company at any time during the six-month period following delivery by you to the Company of written notice of the proposed sale, assignment, license or other transfer of any such IP.

8. Non-Compete; Non-Solicitation.

(a) You acknowledge that you are one of the founders of the Company and, in addition, that in the course of the Consulting Period you will become familiar with the Company's and its Affiliates' trade secrets and with other Confidential Information concerning the Company and its Affiliates and that the services provided hereunder will be of special, unique and extraordinary value to the Company and its Affiliates. Therefore, during the Non-Compcte Period, you will not, directly or indirectly, own, manage, control, participate in, consult with, render services for, or in any manner engage in any business that competcs with the businesses of the Company or any of its Affiliates as such businesses exist during the Consulting Period, any business oppOltunity that the Company or any of its Affiliates has devoted resources in analyzing or initiating, or the business of any entity which the Company or any of its Affiliates is considering to acquire where the Company or any of its Affiliates and has either received information from or had discussions with such entity or its owners during the Consulting Period (collectively, the "Restricted Businesses").

(b) For purposes of this Agreement, "Non-Compete Period" means during the Consulting Period.

(c) Nothing in this Section 8 will prohibit you from (i) being a passive owner of not more than 2% of the outstanding stock of a publicly-traded corporation, so long as you have no active

partIcIpation in the business of such corporation, or (ii) taking any action approved in writing by the Board of Directors.

(d) During the Non-Compete Period, other than in the proper performance of your duties on behalf of the Company, you will not, directly or indirectly through another person or entity (i) solicit any employee or consultant of the Company or its Affiliates to leave the employ of the Company or its Affiliates, or in any way interfere with the relationship between the Company or its Affiliates, on the one hand, and any employee or consultant thereof, on the other hand, (ii) hire any person who was an employee or consultant of the Company or its Affiliates until one year after such individual's engagement or consulting relationship with the Company or its Affiliates has been terminated or (iii) induce or attempt to induce any customer, supplier or other business relation of the Company or its Affiliates to cease doing business with the Company or its Affiliates, or in any way interfere with the relationship between any such customer, supplier or business relation, on the one hand, and the Company or its Affiliates, on the other hand.

(e) During the Non-Compete Period, you agree not to make any public statement that is intended to or could reasonably be expected to disparage the Company or its Affiliates or any of their products, services, shareholders, directors, officers or employees. During the Non-Compete Period, the Company agrees that it will not make a public statement that is intended to or could reasonably be expected to disparage you.

(I) During the Non-Compete Period, you agree to cooperate, in a reasonable and appropriate manner, with the Company and its attorneys, both during and after the termination of your engagement, in connection with any litigation or other proceeding arising out of or relating to matters in which you werc involved prior to the termination of your engagement to the extcnt the Company pays all reasonable out-of-pocket expenses you incur in connection with such coopcration.

(g) You agree that, for the duration of the Consulting Period, you will submit to the Board all business, commercial and investment oppol1unities presented to you or of which you become aware which relate to the business of the Company and its Subsidiaries, and unless approved by the Board in writing, you will not pursue, directly or indirectly, any such opportunities on your own behalf.

9. Enforcement.

(a) If, at the time of enforcement of Section 6, 7 or 8 of this Agreement, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the pa1 1ies hereto agree that the maximum period, scope or geographical area reasonable under such circumstances will be substituted for the stated pcriod, scope or area.

(b) Because the relationship between you and the Company is uniquc and becausc you have access to Confidential Information and Work Product, you agree that money damages would be an inadequate remedy for any breach of Section 6, 7 or 8 of this Agreement. Therefore, in the event of a breach or thrcatened breach of Section 6, 7 or 8 of this Agreement, the Company may, in addition to its other rights and remedies, apply to any coul1 of competent jurisdiction for specific performance andlor injunctive or other relief in order to enforce, or prevent any violations of, such provisions (without posting a bond or other security) or require you to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived or received as a resnlt of any transactions constituting a breach ofthe covenants contained therein.

(c) The prevailing party in any legal action ansmg out of or relating to this Agreement will be entitled to its reasonable attorneys' fees and court and other costs.

10. Representations and Warranties. You hereby represent and warrant to the Company that (a) the execution, delivery and performance of this Agreement by you does not and will not conflict with, breach, violate or cause a default under any agreement, contract or instrument to which you are a pal1y or any judgment, order or decree to which you arc subject, (b) you are not a pal1y to or bound by any employment agreement, consulting agreement, non-compete agreement, confidentiality agreement or similar agreement with any other person or entity that is inconsistent with the provisions of this Agreement and (c) upon the execution and delivery of this Agreement by the Company and you, this Agreement will be a valid and binding obligation of you.

I I. Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim or other communication hereunder will be deemed duly given (i) upon delivery, if delivered personally to the recipient or (ii) upon the first business day after the date sent, if sent to the intended recipient by reputable express courier service (charges prepaid) and addressed to the intended recipient as set forth below:

If to the Company, to:

HeatwurxAQ, Inc. 136 Heber Avenue, Suite 304 Park City, Utah 84060 Attn: President

If to you, to your address first set forth above.

Any party hereto may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set fOl1h above using any other means, but no such notice, request, demand, claim or other communication will be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party hereto may change the address (or add new parties and their addresses) to which notices, requcsts, demands, claims, and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth in this Section I I.

12. General Provisions.

(a) Indemnification. In addition to any bylaw which indemnifies directors and officers of the Company, the Company shall indemnify you, hold you harmless and defend you from any claim or legal proceeding against you from a third party arising as a result of any action taken by you in connection with the Company Or your duties hereunder, including any of your duties as an officer or director of the Company and/or any Subsidiarics of the Company to the fullest extent that such indemnification may be afforded to you under Delaware law; provided, however, that such indemnification shall not apply with respect to, and you shall indemnify, hold harmless and defend the Company and any Subsidiaries of the Company from any claim or legal proceeding arising as a result of, any action not within the scope of your duties under this Agreement or in a manner contrary to the duties assigned to you pursuant to this Agreement. The Company agrees to cover you under any directors' and officers' liability policy maintained by the Company.

(b) Severabilitv. It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement will be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, will be ineffectivc, without

invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it will, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

(c) Complete Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior drafts, understandings, agreements or representations by or among the parties written or oral, which may have related to the subject matter hereof in any way.

(d) Successors and Assigns; Third Party Beneficiaries. Except as otherwise provided herein, this Agreement will be binding upon and inure to the benefit of you and the Company and our respective successors, permitted assigns, personal representatives, heirs and estates, as the case may be; provided, however, that your rights and obligations nnder this Agreement will not be assigned without the prior written consent of the Company.

(e) Governing Law. This Agreement will be governed by and construed in accordance with the domestic laws of the State of Utah, without giving effect to the choice of law provisions thereof.

(I) Amendment and Waiver. The provisions of this Agrcement may be amended and waived only with the prior written consent of the Company (with the approval of the Board) and you, and no course of conduct or failure or delay in enforcing the provisions of this Agreement will affect the validity, binding effect or enforceability of this Agrccment or any provision hereof.

(g) Headings. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

(h) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument

(i) Dispute Resolution. All disputes, controversies, diffcrcnces, claims or counterclaims which may arise between the parties out of, in relation to or in connection with this Agreement, or from a breach hcreof, except for any provisions hereof for which a remedy described in Section 9 is sought, shall be settled by binding arbitration in accordance with the rules of commercial arbitration of the American Arbitration Association before a panel of three (3) arbitrators, in Salt Lake City, Utah. Expenses of arbitration shall be shared equally by you and the Company unless thc arbitrators determine that the expenses should be otherwise addressed. During the arbitration proceedings, the parties shall be entitled to all rights afforded undcr the Federal Rules of Civi I Procedure. Any arbitration award shall be enforceable in auy court having jurisdiction thereof.

13. Code Section 409A Compliance.

(a) A termination will not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination unless such termination is also a "separation from service" within the meaning Code Section 409A, for

purposes of any such provision of this Agreement , references herein to a "termination," "termination of engagement" or similar terms will mean **"separation from service."**

(b) The intent of the pal1ies is that payments and benefits under this Agreement comply with or be exempt from Code Section 409A and the regulations and guidance promulgated thereunder and, accordingly, to the maximum extent permitted, this Agreement will be interpreted to be in compliance therewith or exempt therefrom. **In** no event whatsoever will the Company be liable for any additional tax, interest or penalty that may be imposed on you by Code Section 409A or damages for failing to comply with Code Section 409A other than as a result of a breach of this Agreement by the Company.

(c) Notwithstanding any other payment schedule provided herein to the contrary, if you are identified on the date of termination as a "specified employee" within the meaning of that term under Code Section 409A(a)(2)(B), then with regard to any payment that is considered nonqualified deferred compensation subject to Code Section 409A, as determined in good faith by the Company, and payable on account of a "separation from service," such payment will be made on the date which is the earlier of (A) the expiration of the six (6)-month period measured from the date of your "separation from service," and (B) the date of your death (the "Delay Period") to the extent required under Code Section 409A. Upon the expiration of the Delay Period, all payments delayed pursuant to this Section (whether they would havc otherwise been payable in a single sum or in installments in the absence of such delay) will be paid to you in a lump sum, and all remaining payments due under this Agreement will be paid or provided in accordance with the normal payment dates specified for them herein.

(d) For purposes of Code Section 409A, your right to receive any installment payment pursuant to this Agreement will bc treated as a right to receive a serics of separate and distinct payments.

(e) Whencver a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment will be made within thil1y (30) days following the date of termination"), the actual date of payment within the specified period will be determined by the Company in good faith.

(f) Notwithstanding any other provision herein to the contrary, in no event will any payment that constitutes nonqualified deferred compensation subject to Code Section 409A, as determined in good faith by the Company, be subject to offset, counterclaim or recoupment by any other amount payable to your unless otherwise permitted by Code Section 409A.

(g) To the extent that reimbursements or other in-kind benefits under this agreement constitute "nonqualified deferred compensation" for purposes of Code Section 409A, (A) all such expenses or other reimbursements hereunder shall be made on or prior to the last day of the taxable year following the taxable year in which such expenses were incurrcd by you, (B) any right to such reimburscment or in-kind benefits shall not be subject to liquidation or exchange for another benefit, and

(C) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year shall in any way affect the expenses eligible for reimbursement, or in-kind bencfits to be provided, in any other taxable year.

[Signature Page Follows]

If this letter correctly expresses our mutual understanding, please sign and date a copy of this letter and return it to us. Very truly yours,

HEATWURXAQ, INC.

/s/ Larry Griffin
CFO, President
The terms of this letter are accepted and agreed to on April 15, 2011 by:
/s/ Richard Giles

Exhibit A (a)

You shall receive an Annual Bonus for each calendar year (or part thereof) during the Consulting Period in an amount up to 50% of your Base Compensation paid such year, determined as follows:

1. One-third of such bonus shall be earned based on meeting the Gross Revenue Target for such year. The Gross Revenue Target for calendar year 2011 is $2,200,000. "Gross Revenue" means the total revenues of the Company determined in accordance with generally accepted accounting principles, consistently applied.

2. Two-thirds of such AlUmal Bonus shall be earned based on meeting the EBITDA Target for such year. The EBITDA Target for calendar year 2011 is $250,000. "EBITDA" means the earnings before interest, taxes, depreciation and amortization of the Company determined in accordance with generally accepted accounting principles, consistently applied

3. The Gross Revenue Target for calendar years after 2011 during the Consulting Period shall be established reasonably and in good faith by the Board of Directors during January of each such calendar year based on the projected Gross Revenue and EBITDA for such calendar year.

4. The Annual Bonus shall be paid not later than March 31 of the year following the calendar year for which such bonus has been earned.

(a) This Exhibit A is an illustration of how the Annual Bonus may be structured. The actual annual bonus provision will be established by the Board of Directors, acting reasonably and in good faith, within 30 days after the date ofthis Agreement.

HEATWURXAQ, INC.
RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT

THIS RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT (the " **Agreement**") is made as of April 15, 2011, by and among HeatwurxAQ, Inc., a Delaware corporation (the "**Company**"), those certain holders of Common Stock listed on Exhibit A attached hereto (together with any transferee who becomes subject to the provisions hereof pursuant to Section 4, the "**Key Holders**"), and those certain holders of Series A Preferred Stock listed on Exhibit B attached hereto (each, an "**Investor**" and collectively, the " **Investors**").

RECITALS:

WHEREAS, the Company and certain of the Investors are parties to that certain Series A Preferred Stock Purchase Agreement and Senior Secured Notes Purchase Agreement, dated of even date herewith (the "**Purchase Agreement**"), pursuant to which such Investors are purchasing shares of the Company's Series A Preferred Stock, par value $0.001 per share (" **Series A Preferred Stock** ") and senior secured notes of the Company ("**Senior Notes**");

WHEREAS, in order to further induce such Investors to purchase the Series A Preferred Stock and Senior Notes in the Company pursuant to the Purchase Agreement, the parties hereto have agreed to enter into this Agreement;

WHEREAS, Exhibit A and Exhibit B set forth the number of shares of the capital stock of the Company beneficially owned by each Key Holder and Investor, respectively; and

WHEREAS, the obligations of the Purchase Agreement are conditioned upon the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. Definitions.

(a) "**Affiliate(s)**" shall mean, with respect to any specified Investor, any person who directly or indirectly, controls, is controlled by or is under common control with such Investor, including, without limitation, any general partner, manager, managing member, officer or director of such Investor or any venture capital fund now or hereafter existing that is controlled by one or more general partners, managers or managing members of, or shares the same management company with, such Investor.

(b) "**Capital Stock**" means (a) shares of Common Stock and Series A Preferred Stock (whether now outstanding or hereafter issued in any context), (b) shares of Common Stock issued or issuable upon conversion of Series A Preferred Stock and (c) shares of Common Stock issued or issuable upon exercise or conversion, as applicable, of stock options, warrants or other convertible securities of the Company, in each case now owned or subsequently acquired by any Key Holder, any Investor, or their respective successors or permitted transferees or assigns. For purposes of the number of shares of Capital Stock held by an Investor or Key Holder (or any other calculation based thereon), all shares of Series A Preferred Stock shall be deemed to have been converted into Common Stock at the then-applicable conversion ratio.

(c) "**Common Stock**" shall mean the Company's Common Stock, $0.001 par value per share.

(d) "**Company Notice**" means written notice from the Company notifying the selling Key Holders that the Company intends to exercise its Right of First Refusal as to some or all of the Transfer Stock with respect to any Proposed Key Holder Transfer.

(e) "**Investor Notice**" means written notice from an Investor notifying the Company and the selling Key Holder that such Investor intends to exercise its Secondary Refusal Right as to a portion of the Transfer Stock with respect to any Proposed Key Holder Transfer.

(f) "**person**" means any individual, firm, company, corporation, unincorporated association, partnership, limited liability company, trust, syndicate, estate, joint venture or other entity, and shall include any successor (by merger or otherwise) of such entity.

(g) "**Proposed Key Holder Transfer** " means any assignment, sale, offer to sell, pledge, mortgage, hypothecation, encumbrance, disposition of or any other like transfer or encumbering of any Transfer Stock (or any interest therein) proposed by any of the Key Holders.

(h) "**Proposed Transfer Notice**" means written notice from a Key Holder setting forth the terms and conditions of a Proposed Key Holder Transfer.

(i) "**Prospective Transferee**" means any person to whom a Key Holder proposes to make a Proposed Key Holder Transfer.

(j) "**Right of First Refusal**" means the right, but not an obligation, of the Company, or its permitted transferees or assigns, to purchase some or all of the Transfer Stock with respect to a Proposed Key Holder Transfer, on the terms and conditions specified in the Proposed Transfer Notice.

(k) "**Secondary Notice**" means written notice from the Company notifying the Investors and the selling Key Holder that the Company does not intend to exercise its Right of First Refusal as to all shares of Transfer Stock with respect to any Proposed Key Holder Transfer.

(l) "**Secondary Refusal Right**" means the right, but not an obligation, of each Investor to purchase up to its pro rata portion (based upon the total number of shares of Capital Stock then held by all Investors) of any Transfer Stock not purchased pursuant to the Right of First Refusal, on the terms and conditions specified in the Proposed Transfer Notice.

(m) "**Transfer Stock**" means shares of Capital Stock owned by a Key Holder, or issued to a Key Holder after the date hereof (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), but does not include any shares of Series A Preferred Stock or Common Stock issued or issuable upon conversion of Series A Preferred Stock.

2. Agreement Among the Company, the Investors and the Key Holders.

(a) **Right of First Refusal**.

(i) **Grant**. Subject to the terms of Section 3 below, each Key Holder hereby unconditionally and irrevocably grants to the Company a Right of First Refusal to purchase all or any portion of Transfer Stock that such Key Holder may propose to transfer in a Proposed Key Holder Transfer, at the same price and on the same terms and conditions as those offered to the Prospective Transferee.

(ii) **Notice**. Each Key Holder proposing to make a Proposed Key Holder Transfer must deliver a Proposed Transfer Notice to the Company and each Investor not later than forty-five (45) days prior to the consummation of such Proposed Key Holder Transfer. Such Proposed Transfer Notice shall contain the material terms and conditions (including price and form of consideration) of the Proposed Key Holder Transfer and the identity of the Prospective Transferee. To exercise its Right of First Refusal under this Section 2, the Company must deliver a Company Notice to the selling Key Holder and to the Company within fifteen (15) days after delivery of the Proposed Transfer Notice. In the event of a conflict between this Agreement and any other agreement that may have been entered into by a Key Holder with the Company that contains a preexisting right of first refusal, including without limitation, the Company's Bylaws, the Company and the Key Holder acknowledge and agree that the terms of this Agreement shall control and the preexisting right of first refusal shall be deemed satisfied by compliance with Section 2(a)(i) and this Section 2(a)(ii).

(iii) **Grant of Secondary Refusal Right to the Investors**. Subject to the terms of Section 3 below, each Key Holder hereby unconditionally and irrevocably grants to the Investors a Secondary Refusal Right to purchase all or any portion of the Transfer Stock not purchased by the Company pursuant to the Right of First Refusal, as provided in this Section 2(a)(iii). If the Company does not intend to exercise its Right of First Refusal with respect to all Transfer Stock subject to a Proposed Key Holder Transfer, the Company must deliver a Secondary Notice to the selling Key Holder and to each Investor to that effect no later than fifteen (15) days after the selling Key Holder delivers the Proposed Transfer Notice to the Company. To exercise its Secondary Refusal Right, an Investor must deliver an Investor Notice to the selling Key Holder and the Company within ten (10) days after the Company's deadline for its delivery of the Secondary Notice as provided in the preceding sentence.

(iv) **Consideration; Closing**. If the consideration proposed to be paid for the Transfer Stock is in property, services or other non-cash consideration, the fair market value of the consideration shall be as determined in good faith by the Company's Board of Directors and as set forth in the Company Notice. If the Company or any Investor cannot for any reason pay for the Transfer Stock in the same form of non-cash consideration, the Company or such Investor may pay the cash value equivalent thereof, as determined in good faith by the Board of Directors and as set forth in the Company Notice. The closing of the purchase of Transfer Stock by the Company and the Investors shall take place, and all payments from the Company and the Investors shall have been delivered to the selling Key Holder, by the later of (i) the date specified in the Proposed Transfer Notice as the intended date of the Proposed Key Holder Transfer and (ii) forty-five (45) days after delivery of the Proposed Transfer Notice**.**

(b) **Co-Sale**.

(i) **Right of Co-Sale.** If an Investor has waived or failed to timely exercise its Secondary Refusal Right to acquire Transfer Stock, such Investor will have the right to participate in the transfer of any Transfer Stock not purchased by the other Investors or the Company

(the "***Remaining Transfer Stock***") in the manner set forth herein (the "***Right of Co-Sale***"). Pursuant to this Section 2(b), each such Investor may transfer to the Prospective Transferee(s) identified in the Proposed Transfer Notice up to its pro rata portion (based upon the total number of shares of Capital Stock then held by all Investors that elect to exercise the Right of Co-Sale and the selling Key Holder) of the Remaining Transfer Stock, by giving written notice to the selling Key Holder and the Company within ten (10) days after the Company's deadline for its delivery of the Secondary Notice, specifying the number of shares of Capital Stock that such Investor desires to transfer to the Prospective Transferee by exercising the Right of Co-Sale. For example, if there are 100,000 shares of Remaining Transfer Stock, and a total of 1,000,000 shares held by the Investors that elect to exercise the Right of Co-Sale and the selling Key Holder, then (A) an Investor holding 500,000 shares would have the right to transfer 50,000 shares to the Prospective Transferee, and (B) an Investor holding 100,000 shares would have the right to transfer 10,000 shares to the Prospective Transferee.

(i) **Consummation of Co-Sale**. An Investor, in exercising the Right of Co-Sale, may effect such Investor's participation in such Transfer by delivering to the selling Key Holder at the Closing of the transfer of Transfer Stock to such transferee one or more certificates, properly endorsed for Transfer, representing such Capital Stock to be Transferred by such Investor. At the Closing, such certificates or other instruments will be transferred and delivered to the Prospective Transferee(s) set forth in the selling Key Holder's Notice in consummation of the transfer of the Transfer Stock pursuant to the terms and conditions specified in the selling Key Holder's Notice, and the selling Key Holder will remit, or will cause to be remitted, to each such Investor within seven (7) days after such Closing that portion of the proceeds of the Transfer to which such Investor is entitled by reason of such Investor's participation in such Transfer pursuant to the Right of Co-Sale. In the event that an Investor electing to exercise its Right of Co-Sale fails to deliver the stock certificates as specified above at the Closing, such Investor shall have waived its Right of Co-Sale therefor and the selling Key Holder shall be entitled to complete the Transfer at the Closing without participation by the waiving Investor.

(c) **Effect of Failure to Comply**.

(i) **Transfer Void; Equitable Relief**. Any Proposed Key Holder Transfer not made in compliance with the requirements of this Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company. Each party hereto acknowledges and agrees that any breach of this Agreement would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Transfer Stock not made in strict compliance with this Agreement).

(ii) **Violation of First Refusal Right**. If any Key Holder becomes obligated to sell any Transfer Stock to the Company or any Investor under this Agreement and fails to deliver such Transfer Stock in accordance with the terms of this Agreement, the Company and/or such Investor may, at its option, in addition to all other remedies it may have, send to such Key Holder the purchase price for such Transfer Stock as is herein specified and transfer to the name of the Company or such Investor (or request that the Company effect such transfer in the name of an Investor) on the Company's books the certificate or certificates representing the Transfer Stock to be sold.

3. Exempt Transfers.

(a) **Exempted Transfers**. Notwithstanding the foregoing or anything to the contrary herein, the provisions of Sections 2(a) and 2(b) shall not apply: (i) in the case of a Key Holder that is an entity, upon a transfer by such Key Holder to its stockholders, members, partners or other equity holders, (ii) to a repurchase of Transfer Stock from a Key Holder by the Company at a price no greater than that originally paid by such Key Holder for such Transfer Stock and pursuant to an agreement containing vesting and/or repurchase provisions approved by a majority of the Board of Directors, or (iii) in the case of a Key Holder that is a natural person, upon a transfer of Transfer Stock by such Key Holder made for bona fide estate planning purposes, either during his or her lifetime or on death by will or intestacy to his or her spouse, child (natural or adopted), or any other direct lineal descendant of such Key Holder (or his or her spouse) (all of the foregoing collectively referred to as "family members"), or any other person approved by the Board of Directors of the Company, or any custodian or trustee of any trust, partnership or limited liability company for the benefit of, or the ownership interests of which are owned wholly by, such Key Holder or any such family members; provided that in the case of clauses (i) and (iii), the Key Holder shall deliver prior written notice to the Investors of such gift or transfer and such shares of Transfer Stock shall at all times remain subject to the terms and restrictions set forth in this Agreement and such transferee shall, as a condition to such issuance, deliver a counterpart signature page to this Agreement as confirmation that such transferee shall be bound by all the terms and conditions of this Agreement as a Key Holder (but only with respect to the securities so transferred to the transferee), including the obligations of a Key Holder with respect to Proposed Key Holder Transfers of such Transfer Stock pursuant to Section 2.

(b) **Exempted Offerings**. Notwithstanding the foregoing or anything to the contrary herein, the provisions of Section 2 shall not apply to the sale of any Transfer Stock (i) to the public in an offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (a "**Public Offering**") or (ii) pursuant to a Deemed Liquidation Event (as defined in the

Company's Certificate of Incorporation).

(c) **Prohibited Transferees**. Notwithstanding the foregoing, no Key Holder shall transfer any Transfer Stock to (i) any entity which, in the determination of the Company's Board of Directors, directly or indirectly competes with the Company or (ii) any customer, distributor or supplier of the Company, if the Company's Board of Directors should determine that such transfer would result in such customer, distributor or supplier receiving information that would place the Company at a competitive disadvantage with respect to such customer, distributor or supplier.

4. Legend. Each certificate representing shares of Transfer Stock held by the Key Holders or issued to any permitted transferee in connection with a transfer permitted by Section 3 hereof shall be endorsed with a legend substantially as follows:

> THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO, AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT BY AND AMONG THE STOCKHOLDER, THE CORPORATION AND CERTAIN OTHER HOLDERS OF STOCK OF THE CORPORATION. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION.

Each Key Holder agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in this Section 4 above to enforce the provisions of this Agreement, and the Company agrees to promptly do so. The legend shall be removed upon termination of this Agreement at the request of the holder.

5. Lock-Up.

(a) **Agreement to Lock-Up**. Each Key Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's initial public offering (the "IPO") and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days following the effective date of the registration statement relating to such offering, which period may be extended upon the request of the managing underwriter for an additional period of up to fifteen (15) days if the Company issues or proposes to issue an earnings or other public release within fifteen (15) days of the expiration of the 180-day lockup period) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Capital Stock held immediately prior to the effectiveness of the registration statement for the IPO or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Capital Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Capital Stock or other securities, in cash or otherwise. The foregoing provisions of this Section 5 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Key Holders if all officers, directors and holders of more than one percent (1%) of the outstanding Common Stock (after giving effect to the conversion into Common Stock of all outstanding Series A Preferred Stock) enter into similar agreements. The underwriters in connection with the IPO are intended third-party beneficiaries of this Section 5 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Key Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the IPO that are consistent with this Section 5 or that are necessary to give further effect thereto.

(b) **Stop Transfer Instructions**. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the shares of Capital Stock of each Key Holder (and transferees and assignees thereof) until the end of such restricted period.

6. Miscellaneous.

(a) **Term**. This Agreement shall terminate and be of no further force or effect upon the earlier to occur of (i) the closing of the Company's IPO, (ii) a Deemed Liquidation Event (as defined in the Company's Certificate of Incorporation), or (iii) the written consent of the holders of at least a majority of the then-outstanding Series A Preferred Stock.

(b) **Stock Split**. All references to numbers of shares in this Agreement shall be appropriately adjusted to reflect any stock dividend, split, combination or other recapitalization affecting the Capital Stock occurring after the date of this Agreement.

(c) **Ownership**. Each Key Holder represents and warrants that such Key Holder is the sole legal and beneficial owner of the shares of Transfer Stock subject to this Agreement and that no other person or entity has any interest in such shares (other than a community property interest as to which the holder thereof has acknowledged and agreed in writing to the restrictions and obligations hereunder).

(d) **Notices**. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be

notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 6(d)).

(e) **Entire Agreement**. This Agreement (including the Exhibits and Schedules hereto) constitutes the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.

(f) **Delays or Omissions**. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

(g) **Amendment; Waiver and Termination**. This Agreement may be amended, modified or terminated (other than pursuant to Section 6(a) above) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (i) the Company, (ii) the Key Holders holding two-thirds of the shares of Transfer Stock then held by all of the Key Holders and (iii) the holders of a majority of the shares of Common Stock issued or issuable upon conversion of the then outstanding shares of Series A Preferred Stock held by the Investors. Any amendment, modification, termination or waiver so effected shall be binding upon the Company, the Investors, the Key Holders and all of their respective successors and permitted assigns whether or not such party, assignee or other shareholder entered into or approved such amendment, modification, termination or waiver. Notwithstanding the foregoing, (x) this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any Investor or Key Holder without the written consent of such Investor or Key Holder unless such amendment, modification, termination or waiver applies to all Investors and Key Holders, respectively, in the same fashion and (y) the consent of the Key Holders shall not be required for any amendment, modification, termination or waiver if such amendment, modification, termination or waiver does not apply to the Key Holders, and (z) Exhibits A and B hereto may be amended by the Company from time to time to add information regarding additional Investors and/or Key Holders without the consent of the other parties hereto. The Company shall give prompt written notice of any amendment, modification or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, modification, termination or waiver. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

(h) **Assignment of Rights**.

(i) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(ii) Any successor or permitted assignee of any Key Holder, including any Prospective Transferee who purchases shares of Transfer Stock in accordance with the terms hereof, shall deliver to the Company and the Investors, as a condition to any transfer or assignment, a counterpart signature page hereto pursuant to which such successor or permitted assignee shall confirm their agreement to be subject to and bound by all of the provisions set forth in this Agreement that were applicable to the predecessor or assignor of such successor or permitted assignee.

(iii) The rights of the Investors hereunder are not assignable without the Company's written consent (which shall not be unreasonably withheld, delayed or conditioned), except (A) by an Investor to any Affiliate or (B) to an assignee or transferee who acquires at least 50,000 shares of Capital Stock (as adjusted for any stock combination, stock split, stock dividend, recapitalization or other similar transaction), it being acknowledged and agreed that any such assignment, including an assignment contemplated by the preceding clauses (A) or (B) shall be subject to and conditioned upon any such assignee's delivery to the Company and the other Investors of a counterpart signature page hereto pursuant to which such assignee shall confirm their agreement to be subject to and bound by all of the provisions set forth in this Agreement that were applicable to the assignor of such assignee.

(iv) Except in connection with an assignment by the Company by

operation of law to the acquirer of the Company, the rights and obligations of the Company hereunder may not be assigned under any circumstances.

(i) **Severability**. In the event that one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect or impair any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) **Additional Investors**. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company's Series A Preferred Stock after the date hereof, any purchaser of such shares of Series A Preferred Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and thereafter shall be deemed an "Investor" for all purposes hereunder.

(k) **Governing Law**. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

(l) **Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(m) **Counterparts; Facsimile**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(n) **Aggregation of Stock**. All shares of the Capital Stock held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

(o) **Specific Performance**. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each Investor shall be entitled to specific performance of the agreements and obligations of the Company and the Key Holders hereunder and to such other injunction or other equitable relief as may be granted by a court of competent jurisdiction.

(p) **Consent of Spouse**. If any Key Holder is married on the date of this Agreement, such Key Holder's spouse shall execute and deliver to the Company a consent of spouse in the form of Exhibit C hereto ("**Consent of Spouse**"), effective on the date hereof. Notwithstanding the execution and delivery thereof, such consent shall not be deemed to confer or convey to the spouse any rights in such Key Holder's shares of Transfer Stock that do not otherwise exist by operation of law or the agreement of the parties. If any Key Holder should marry or remarry subsequent to the date of this Agreement, such Key Holder shall within thirty (30) days thereafter obtain his/her new spouse's acknowledgement of and consent to the existence and binding effect of all restrictions contained in this Agreement by causing such spouse to execute and deliver a Consent of Spouse acknowledging the restrictions and obligations contained in this Agreement and agreeing and consenting to the same.

[Remainder Page Intentionally Left Blank; Signature Pages Follow]

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

COMPANY:

HEATWURXAQ, INC.

By: /s/ Larry Griffin
Title: CFO, President

INVESTORS:

SAN GABRIEL FUND, LLC

By: /s/ Justin Yorke
Title: Manager

JMW FUND, LLC

By: /s/ Justin Yorke
Title: Manager

By: _____
Title: _____

[_____]

By: _____
Title: _____

KEY HOLDERS:

/s/ Larry C. Griffin
Larry C. Griffin

/s/ David J. Eastman

David J. Eastman

/s/ Richard Giles
Richard Giles

EXHIBIT A

KEY HOLDERS

Name of Key Holder	Number of Shares of Common Stock Held
Larry C. Griffin	100,000
David J. Eastman	100,000
Richard Giles	200,000

EXHIBIT A

EXHIBIT B

SCHEDULE OF INVESTORS

Name of Investor	Number of Shares of Series A Preferred Stock
San Gabriel Fund, LLC 4 Richland Place Pasadena, CA 91103 Attn: Justin Yorke	225,000
JMW Fund, LLC 4 Richland Place Pasadena, CA 91103 Attn: Justin Yorke	225,000
[Name]	
[Name]	
[NAME]	150,000

EXHIBIT B

EXHIBIT C

CONSENT OF SPOUSE

I, [_____], spouse of [_____], acknowledge that I have read the Right of First Refusal and Co-Sale Agreement, dated as of April 15, 2011, to which this Consent is attached as Exhibit C (the "**Agreement**"), and that I know the contents of the Agreement. I am aware that the Agreement contains provisions regarding certain rights to certain other holders of Capital Stock of the Company upon a Proposed Key Holder Transfer of shares of Transfer Stock of the Company which my spouse may own including any interest I might have therein.

I hereby agree that my interest, if any, in any shares of Transfer Stock of the Company subject to the Agreement shall be irrevocably bound by the Agreement and further understand and agree that any community property interest I may have in such shares of Transfer Stock of the Company shall be similarly bound by the Agreement.

I am aware that the legal, financial and related matters contained in the Agreement are complex and that I am free to seek independent professional guidance or counsel with respect to this Consent. I have either sought such guidance or counsel or determined after reviewing the Agreement carefully that I will waive such right.

Dated as of the [__] day of [_____, _____].

Signature

Print Name

EXHIBIT C

HEATWURXAQ, INC.
VOTING AGREEMENT

THIS VOTING AGREEMENT is made and entered into as of April 15, 2011, by and among HeatwurxAQ, Inc., a Delaware corporation (the "**Company**") and each holder of the Company's Series A Preferred Stock, $0.001 par value per share ("**Series A Preferred Stock**") listed on Schedule A and (together with any subsequent investors, or transferees, who become parties hereto as "Investors" pursuant to Sections 4.1 or 4.2 below, the "**Investors**"), and those certain stockholders of the Company listed on Schedule B hereto as the same may be amended from time to time to include transferees thereof (the "**Key Holders**" and, together with the Investors, collectively, the "**Stockholders**").

RECITALS

A. Concurrently with the execution of this Agreement, the Company and the Investors are entering into a Series A Preferred Stock Purchase Agreement and Senior Secured Notes Purchase Agreement (the "**Purchase Agreement**") providing for the sale of shares of the Company's Series A Preferred Stock and senior secured notes of the Company, and in connection with the Purchase Agreement the parties desire to provide the Investors and Key Holders with the right, among other rights, to designate the election of certain members of the board of directors of the Company (the "**Board**") in accordance with the terms of this Agreement.

B. The Amended and Restated Certificate of Incorporation of the Company (the "**Charter**") provides that (a) the holders of record of the shares of the Company's Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect three (3) directors of the Company (the "**Series A Directors**"), and (b) the holders of record of the shares of common stock of the Company, $0.001 par value ("**Common Stock**"), exclusively and voting together as a single class, shall be entitled to elect two (2) directors of the Company.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Voting Provisions Regarding Board of Directors.

1.1 Size of the Board. Each Stockholder agrees to vote, or cause to be voted, all Shares (as defined below) owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that the size of the Board shall be set and remain at five (5) directors. For purposes of this Agreement, the term "**Shares**" shall mean and include any securities of the Company the holders of which are entitled to vote for members of the Board, including without limitation, all shares of Common Stock and Series A Preferred Stock, by whatever name called, now owned or subsequently acquired by a Stockholder, however acquired, whether through stock splits, stock dividends, reclassifications, recapitalizations, similar events or otherwise.

1.2 Board Composition. Each Stockholder agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of stockholders at which an election of directors is held or pursuant to any written consent of the stockholders, the following persons shall be elected to the Board:

(a) Three individuals, who together shall be the Series A Directors, designated by the holders of record of a majority of the shares of the Company's Series A Preferred Stock, voting exclusively and as a separate class, who shall initially be Justin Yorke, John McGrain and Charles Kirby.

(b) Two individuals, who together shall be the Common Directors, designated by the holders of record of two-thirds of the outstanding shares of the Company's Common Stock, who shall initially be Larry C. Griffin and Richard Giles.

(c) Notwithstanding the foregoing or any provision of the Charter or Bylaws to the contrary, after conversion of the Series A Preferred Stock into Common Stock (the "Converted Stock"), in lieu of the election of the Series A Directors as provided in clause (a) above and the Common Directors as provided in clause (b) above, the following persons shall be elected to the Board: (i) three individuals, who together shall continue to be designated as the Series A Directors, designated by the holders of record of a majority of the shares of Common Stock issued upon conversion of the Series A Preferred Stock (the "Converted Stock"), voting exclusively and as a separate class; and (ii) two individuals, who together shall be the Common Directors, designated by the holders of record of two-thirds of the outstanding shares of the Company's Common Stock other than the Converted Stock.

(d) To the extent that any of clauses (a), (b) and (c) above shall not be applicable, any member of the Board who would otherwise have been designated in accordance with the terms thereof shall instead be voted upon by all the stockholders of the Company entitled to vote thereon in accordance with, and pursuant to, the Company's Charter.

For purposes of this Agreement, an individual, firm, corporation, partnership, association, limited liability company, trust or any other entity (collectively, a "**Person**") shall be deemed an "**Affiliate**" of another Person who, directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

1.3 Failure to Designate a Board Member. In the absence of any designation from the Persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if still eligible to serve as provided herein.

1.4 Removal of Board Members. Each Stockholder also agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that:

(a) no director elected pursuant to Sections 1.2 or 1.3 of this Agreement may be removed from office unless (i) such removal is directed or approved by the affirmative vote of the Person, or of the holders of at least majority of the shares of stock, entitled under Section 1.2 to designate that director or (ii) the Person(s) originally entitled to designate or approve such director or occupy such Board seat pursuant to Section 1.2 is no longer so entitled to designate or approve such director or occupy such Board seat;

(b) any vacancies created by the resignation, removal or death of a director elected pursuant to Sections 1.2 or 1.3 shall be filled pursuant to the provisions of this Section 1; and

(c) upon the request of any party entitled to designate a director as provided in Section 1.2 to remove such director, such director shall be removed.

All Stockholders agree to execute any written consents required to perform the obligations of this Agreement, and the Company agrees at the request of any party entitled to designate directors to call a special meeting of stockholders for the purpose of electing directors. So long as the stockholders of the Company are entitled to cumulative voting, if less than the entire Board is to be removed, no director may be removed without cause if the votes cast against his or her removal would be sufficient to elect such director if then cumulatively voted at an election of the entire Board.

1.5 No Liability for Election of Recommended Directors. No Stockholder, nor any Affiliate of any Stockholder, shall have any liability as a result of designating a person for election as a director for any act or omission by such designated person in his or her capacity as a director of the Company, nor shall any Stockholder have any liability as a result of voting for any such designee in accordance with the provisions of this Agreement.

2. Remedies.

2.1 Covenants of the Company. The Company agrees to use its best efforts, within the requirements of applicable law, to ensure that the rights granted under this Agreement are effective and that the parties enjoy the benefits of this Agreement. Such actions include, without limitation, the use of the Company's best efforts to cause the nomination and election of the directors as provided in this Agreement.

2.2 Specific Enforcement. Each party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Agreement are not performed by the parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that each of the Company and the Stockholders shall be entitled to an injunction to prevent breaches of this Agreement, and to specific enforcement of this Agreement and its terms and provisions in any action instituted in any court of the United States or any state having subject matter jurisdiction.

2.3 Remedies Cumulative. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

3. Term. This Agreement shall be effective as of the date hereof and shall continue in effect until and shall terminate upon the earliest to occur of (a) the consummation of the Company's

first underwritten public offering of its Common Stock (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to its stock option, stock purchase or similar plan or an SEC Rule 145 transaction); (b) the consummation of a Sale of the Company (as defined below) and distribution of proceeds to or escrow for the benefit of the Stockholders in accordance with the Charter; or (c) termination of this Agreement in accordance with Section 4.8 below. For the purposes of this Agreement, a " **Sale of the Company**" shall mean either (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company or (b) a transaction that qualifies as a "Deemed Liquidation Event" as defined in the Charter.

4. Miscellaneous.

4.1 Additional Parties. Notwithstanding anything to the contrary contained herein, if the Company enters into an agreement with any Person to issue shares of capital stock to such Person, following which such Person shall hold Shares constituting two percent (2%) or more of the Company's then outstanding capital stock (treating for this purpose all shares of Common Stock issuable upon exercise of or conversion of outstanding options, warrants or convertible securities, as if exercised and/or converted or exchanged), then the Company shall require such Person, as a condition precedent to entering into such agreement, to become a party to this Agreement by executing and delivering (i) the Adoption Agreement attached to this Agreement as Exhibit A, or (ii) a counterpart signature page hereto agreeing to be bound by and subject to the terms of this Agreement as a Stockholder hereunder. In either event, each such person shall thereafter be deemed a Stockholder for all purposes under this Agreement.

4.2 Transfers. Each transferee or assignee of any Shares subject to this Agreement shall continue to be subject to the terms hereof, and, as a condition precedent to the Company's recognizing such transfer, each transferee or assignee shall agree in writing to be subject to each of the terms of this Agreement by executing and delivering an Adoption Agreement substantially in the form attached hereto as Exhibit A. Upon the execution and delivery of an Adoption Agreement by any transferee, such transferee shall be deemed to be a party hereto as if such transferee were the transferor and such transferee's signature appeared on the signature pages of this Agreement and shall be deemed to be an Investor and Stockholder. The Company shall not permit the transfer of the Shares subject to this Agreement on its books or issue a new certificate representing any such Shares unless and until such transferee shall have complied with the terms of this Section 4.2. Each certificate representing the Shares subject to this Agreement if issued on or after the date of this Agreement shall be endorsed by the Company with the legend set forth in Section 4.12.

4.3 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

4.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law.

4.5 Counterparts; Facsimile. This Agreement may be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.6 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

4.7 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on Schedule A or Schedule B hereto, or to such email address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 4.7.

4.8 Consent Required to Amend, Terminate or Waive . This Agreement may be

amended or terminated and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (a) the Company, (b) the holders of a majority of the shares of Common Stock issued or issuable upon conversion of the shares of Series A Preferred Stock held by the Investors (voting as a single class and on an as-converted basis), and (c) the holders of two-thirds of the shares of Common Stock held by the Key Holders. Notwithstanding the foregoing:

(a) this Agreement may not be amended or terminated and the observance of any term of this Agreement may not be waived with respect to any Investor without the written consent of such Investor unless such amendment, termination or waiver applies to all Investors in the same fashion;

(b) Section 1.2(a) shall not be amended, waived or terminated without the written consent of Investors holding a majority of the Series A Preferred Stock then outstanding; and

(c) any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party.

The Company shall give prompt written notice of any amendment, termination or waiver hereunder to any party that did not consent in writing thereto. Any amendment, termination or waiver effected in accordance with this Section 4.8 shall be binding on each party and all of such party's successors and permitted assigns, whether or not any such party, successor or assignee entered into or approved such amendment, termination or waiver.

4.9 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default previously or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

4.10 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

4.11 Entire Agreement. This Agreement (including the Exhibits hereto), and the Charter and the other Transaction Agreements (as defined in the Purchase Agreement) constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

4.12 Legend on Share Certificates. Each certificate representing any Shares issued after the date hereof shall be endorsed by the Company with a legend reading substantially as follows:

> "THE SHARES EVIDENCED HEREBY ARE SUBJECT TO A VOTING AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME, (A COPY OF WHICH MAY BE OBTAINED UPON WRITTEN REQUEST FROM THE COMPANY), AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF THAT VOTING AGREEMENT, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER AND OWNERSHIP SET FORTH THEREIN."

The Company, by its execution of this Agreement, agrees that it will cause the certificates evidencing the Shares issued after the date hereof to bear the legend required by this Section 4.12 of this Agreement, and it shall supply, free of charge, a copy of this Agreement to any holder of a certificate evidencing Shares upon written request from such holder to the Company at its principal office. The parties to this Agreement do hereby agree that the failure to cause the certificates evidencing the Shares to bear the legend required by this Section 4.12 herein and/or the failure of the Company to supply, free of charge, a copy of this Agreement as provided hereunder shall not affect the validity or enforcement of this Agreement.

4.13 Stock Splits, Stock Dividends, etc. In the event of any issuance of Shares of the Company's voting securities hereafter to any of the Stockholders (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), such Shares shall become subject to this Agreement and shall be endorsed with the legend set forth in Section 4.12.

4.14 Manner of Voting . The voting of Shares pursuant to this Agreement may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law.

4.15 Further Assurances. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

4.16 Dispute Resolution . Any unresolved controversy or claim arising out of or relating to this Agreement, except as (i) otherwise provided in this Agreement, or (ii) any such controversies or claims arising out of either party's intellectual property rights for which a provisional remedy or equitable relief is sought, shall be submitted to arbitration by one arbitrator mutually agreed upon by the parties, and if no agreement can be reached within thirty (30) days after names of potential arbitrators have been proposed by the American Arbitration Association (the "AAA"), then by one arbitrator having reasonable experience in corporate finance transactions of the type provided for in this Agreement and who is chosen by the AAA. The arbitration shall take place in Salt Lake City, Utah, in accordance with the AAA rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (b) depositions of all party witnesses and (c) such other depositions as may be allowed by the arbitrators upon a showing of good cause. The arbitrator shall be required to provide in writing to the parties the basis for the award or order of such arbitrator, and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings. The prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

4.17 Aggregation of Stock. All Shares held or acquired by a Stockholder and/or its Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement, and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

[*Signature Page Follows*]

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

COMPANY:

COMPANY:

HEATWURXAQ, INC.

By: /s/ Larry Griffin
Title: CFO, President

INVESTORS:

SAN GABRIEL FUND, LLC

By: /s/ Justin Yorke
Title: Manager

JMW FUND, LLC

By: /s/ Justin Yorke
Title: Manager

By: _____
Title: _____

[_____]

By: _____
Title: _____

KEY HOLDERS:

/s/ Larry C. Griffin
Larry C. Griffin

/s/ David J. Eastman

David J. Eastman

/s/ Richard Giles
Richard Giles

SCHEDULE A

INVESTORS

Name of Investor	Number of Shares of Series A Preferred Stock
San Gabriel Fund, LLC 4 Richland Place Pasadena, CA 91103 Attn: Justin Yorke	225,000
JMW Fund, LLC 4 Richland Place Pasadena, CA 91103 Attn: Justin Yorke	225,000
[Name]	
[Name]	

SCHEDULE A

SCHEDULE B

KEY HOLDERS

Name of Key Holder	Number of Shares of Common Stock Held
Larry C. Griffin	100,000
David J. Eastman	100,000
Richard Giles	200,000

SCHEDULE B

EXHIBIT A

ADOPTION AGREEMENT

This Adoption Agreement (" **Adoption Agreement**") is executed on _____, 20__, by the undersigned (the "**Holder**") pursuant to the terms of that certain Voting Agreement dated as of April 15, 2011 (the " **Agreement**"), by and among the Company and certain of its Stockholders, as such Agreement may be amended or amended and restated hereafter. Capitalized terms used but not defined in this Adoption Agreement shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Adoption Agreement, the Holder agrees as follows.

1.1 Acknowledgement. Holder acknowledges that Holder is acquiring certain shares of the capital stock of the Company (the "**Stock**"), for one of the following reasons (Check the correct box):

☐ as a transferee of Shares from a party in such party's capacity as an "Investor" bound by the Agreement, and after such transfer, Holder shall be considered an "Investor" and a "Stockholder" for all purposes of the Agreement.

☐ in accordance with Section 4.1 of the Agreement, as a new party who is not a new Investor, in which case Holder will be a "Stockholder" for all purposes of the Agreement.

1.2 Agreement. Holder hereby (a) agrees that the Stock, and any other shares of capital stock or securities required by the Agreement to be bound thereby, shall be bound by and subject to the terms of the Agreement and (b) adopts the Agreement with the same force and effect as if Holder were originally a party thereto.

1.3 Notice. Any notice required or permitted by the Agreement shall be given to Holder at the address or facsimile number listed below Holder's signature hereto.

HOLDER:	ACCEPTED AND AGREED:
By: Name and Title of Signatory	**HEATWURXAQ, INC.**
Address:	By:
	Title:
Facsimile Number:	

SUBORDINATED SECURITY AGREEMENT

THIS SUBORDINATED SECURITY AGREEMENT (" Subordinated Security Agreement ") is made this 15th day of April, 2011, under the laws of the State of Utah, between HEATWURXAQ, INC, a corporation formed under the laws of the State of Delaware (the "Company") whose legal address is 136 Heber Avenue, Suite 304, Park City, Utah 84060, and RICHARD GILES, whose legal address is 6300 Sagewood Drive, Park City, Utah 84098 (the "Secured Party").

Recitals:

A. This Subordinated Security Agreement is being executed and delivered pursuant to the Asset Purchase Agreement dated as of April 15, 2011 between the Company and the Secured Party (the "Purchase Agreement"). As of the date hereof, the Company has issued and delivered to the Secured Party pursuant to the Purchase Agreement a senior subordinated promissory note in the principal amount of $1,000,000 (the "Subordinated Note").

B. In accordance with the Purchase Agreement and the Subordinated Note, payment of all sums due from the Company to the Secured Party under the Subordinated Note shall be secured by a subordinated security interest in all of the Company's rights, title and interest in all of the collateral listed, described or otherwise identified on Exhibit A attached hereto (the "Collateral").

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Grant of Security Interest. To secure the payment of all amounts due from the Company to the Secured Party pursuant to the Subordinated Note, the Company hereby grants and conveys to the Secured Party a continuing security interest in;

(a) the Collateral;

(b) all proceeds and products, if any, of the Collateral; and

(c) all increases, substitutions, replacements, additions, and accessions thereto.

2. Security for Obligations. The Collateral secures the prompt and complete payment when due of all indebtedness and other obligations of the Company under the Subordinated Note (including the outstanding principal of and interest on the Subordinated Note), whether individual or collective, joint or several, direct or indirect, absolute or contingent, contractual or tortious, arising by operation of law or otherwise, now existing or hereafter arising, including principal, interest, fees, expenses, costs and expenses of enforcement, and attorneys' fees and expenses, whether incurred by the Company as principal, surety, endorser, guarantor, accommodation party or otherwise, including any future advances, whether obligatory or voluntary under, or refinancings, renewals or extensions of or substitutions for, any existing or future debt, and any and all costs, expenses and liabilities which may be made or incurred by Secured Party in any way in connection with the Subordinated Note or any collateral security therefor (collectively, the "Obligations").

3. Warranties. The Company warrants, covenants and agrees as follows:

(a) To pay and perform all of the Obligations secured by this Agreement according to their terms.

(b) To defend the title to the Collateral against all persons and against all claims and demands whatsoever, which Collateral, except for the security interest granted hereby, is lawfully owed by the Company and is now free and clear of any and all liens, security interests, claims, charges, encumbrances, taxes and assessments, except the Senior Security Agreement (as defined in Section 9 below).

(c) Upon demand by the Secured Party to furnish further assurances of title, execute any written agreement or do any other act necessary to effectuate the purposes and provisions of this Agreement.

(d) At its own expense to keep the Collateral free and clear of all liens, charges, encumbrances, taxes and assessments (except the Senior Security Agreement).

(e) At its own expense, to pay, when due, all taxes, assessments, judgments, charges and fees relating to the Collateral.

(f) The Company has the right and power, and is duly authorized to enter into this Subordinated Security Agreement and the execution of this Subordinated Security Agreement does not constitute a breach of any provision of any other agreement or any other instrument to which the Company is a party.

4. Default. The occurrence of a default or Event of Default, as defined in the Subordinated Note, shall constitute a "Default" under this Subordinated Security Agreement.

5. Remedies. Upon any Default of the Company and at the option of the Secured Party, the Subordinated Note shall become due and payable in full without any further notice or demand (except as provided in the Subordinated Note), and the Secured Party shall have all the rights, remedies and privileges, with respect to repossession, retention, sale of the Collateral and disposition of the proceeds as are accorded by the applicable sections of the Uniform Commercial Code as in effect in the State of Utah respecting such Default as well as all the rights, remedies and privileges set forth in this Subordinated Security Agreement. Notwithstanding the foregoing, the Secured Party shall not have the right to exercise any of the remedies provided for in this Section 5 unless and until the Senior Notes have been paid in full.

6. Ordinary Course. So long as the Company is not in default under this Subordinated Security Agreement, this Subordinated Security Agreement shall not prohibit the Company from using the Collateral in the ordinary course of its business, and selling or otherwise disposing in the ordinary course of its business of that portion of the Collateral that consists of, or becomes part of, goods, products or equipment that constitute inventory, free and clear of the security interest created by this Subordinated Security Agreement.

7. Information. The Company shall permit the Secured Party, upon reasonable notice and request, to have access to and to inspect and make copies of all documents pertaining to the Collateral.

8. Perfection of Security Interest. The Secured Party is authorized to file a Financing Statement perfecting the security interest granted by the Company pursuant to this Subordinated Security Agreement.

9. Senior Notes and Senior Security Agreement. Concurrently with the issuance of the Subordinated Note, the Company is issuing and delivering Senior Secured Notes dated as of April 15, 2011 in the aggregate principal amount of $1,500,000 (the "Senior Notes") pursuant to the Series A Preferred Stock Purchase Agreement and Senior Secured Notes Purchase Agreement dated April 15, 2011 between the Company and the purchasers of such Senior Notes. The Senior Notes are secured by a first priority security interest in all of the Collateral pursuant to that certain Senior Security Agreement between the Company and the purchasers of the Senior Notes dated as of April 15, 2011 (the "Senior Security Agreement"). Any and all obligations and liabilities of the Company under the Subordinated Note, including, without limit, principal and interest payments, whether direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or to become due, now existing or later arising and whatever the amount and however evidenced, are subordinated in right of payment to any and all obligations and liabilities of the Company to the holders of the Senior Notes including, without limit, principal and interest payments, whether direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or to become due, now existing or later arising and however evidenced, together with all other sums due thereon and all costs of collecting the same (including, without limit, reasonable attorney fees) for which the Company is liable. Notwithstanding anything to the contrary in the Subordinated Note or this Subordinated Security Agreement, the Company may make regularly scheduled payments (but not prepayments, whether voluntary, by acceleration or otherwise) of interest and principal which may come due under the Subordinated Note as and when the same become due and payable in accordance with the terms thereof; provided, however, that the Company may not make any such payments (i) if after giving effect to any such payment, a default or event of default shall have occurred and be continuing under any of the documents evidencing, securing or supporting the Senior Notes, or (ii) after a default or an event of default exists or has occurred under any of the Senior Notes, in which case, all payments on the Senior Notes must be suspended until such time (if ever) as the defaults or events of default under the Senior Notes have been cured and/or the Senior Notes have been paid in full.

10. Release. At such time as the Company shall fully satisfy its obligation to the Secured Party under the Subordinated Note, the Secured Party shall promptly execute and deliver to the Company any and all documents which are necessary to terminate, release and discharge the Secured Party's rights hereunder, and any other security interest given in connection herewith.

[Signature Page Follows]

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

COMPANY:

HEATWURXAQ, INC.

By: /s/ Larry Griffin
Title: CFO, President

SECURED PARTY:

/s/ Richard Giles
Richard Giles

EXHIBIT A

Collateral

1. Personal Property and Equipment. The items of personal property and equipment listed or otherwise identified on Attachment A to this Exhibit B.

2. Customer Contracts. Any and all contracts, agreements, rights and understandings with customers, clients and or similar persons listed on Attachment B to this Exhibit B (whether or not services currently are being provided by Seller to such persons), together with all documents and records related thereto (the "***Customer Contracts***").

3. Other Contracts. The contracts, agreements, rights and understandings listed, described or otherwise specifically referred to on Attachment C to this Exhibit B, together with all documents and records related thereto (the "***Other Contracts***").

4. Seller Intellectual Property Rights. Any and all rights, title and interest of Seller in, to and under Intellectual Property Rights listed, described or otherwise specifically referred to on Attachment D to this Exhibit B, together with all documents and records related thereto, including domain names and web/internet sites and addresses.

5. Customer Accounts Receivable. Any and all billed accounts receivable and/or unbilled services related to the Customer Contracts (the "***Customer Accounts Receivable***").

6. Seller's Name. All rights, title and interest of Seller in and to the name "Heatwurx", and any and all other names used in connection with the Business.

7. Additional Items. The other assets, properties, rights and interests that are listed or described on Attachment E to this Exhibit B, together with all documents and records related thereto (the "***Additional Items***").

ATTACHMENT A TO EXHIBIT B

None.

ATTACHMENT B TO EXHIBIT B

1. Pending distribution agreement with Wheeler Machinery in Salt Lake City, Utah.
2. All aspects of a developing relationship with Caterpillar, Inc.

ATTACHMENT C TO EXHIBIT B

1. Pending manufacturing agreement with Bowman Kemp in Ogden, Utah;
2. Pending manufacturing or licensing agreement with Caterpillar and subsidiaries

ATTACHMENT D TO EXHIBIT B

1. Heatwurx trademark.
2. "Heatwurx" and all related tradenames.
3. heatwurx.com website and all related IP addresses.
4. HWX 30 product name, description and marketing collateral and all related parts, add-ons and all manufacturing drawings, descriptions and know how.
5. HWX AP40 product name, description and marketing collateral and all related parts, add-ons and all manufacturing drawings, descriptions and know how.
6. HWX 115 product name, description and marketing collateral and all related parts, add-ons and all manufacturing drawings, descriptions and know how.
7. Heatwurx Rehab oil product name, descriptions and marketing collateral and all related know how.
8. Any derivatives of 4-7 above.
9. Provisional patent application made June 24, 2010 for "Asphalt Repair System and Method" as filed by Clayton, Howarth & Cannon, attorney docket number T12183.PROV.
10. Non-provisional patent application made December 31, 2009 (as priority to filing made January 2, 2009) for "Infrared Heating System and Method for Heating Surfaces" as filed by Clayton, Howarth & Cannon, attorney docket number T11872.
11. All corresponding rights, remedies and continuing ability to assert further claims to 9-10 above.
12. All artwork, photos, videos and related collateral material relating to the Heatwurx brand, product and process, including the right to use the likeness of Mr. Giles (without royalty) as currently contained in that material.

ATTACHMENT E TO EXHIBIT B

1. ASHTO TIG Nomination.
2. Relationship with UDOT.
3. Relationship with TXDOT.
4. Relationship with Federal Highways, including Highways for Life program.
5. National Parks relationship.
6. All business opportunities that arise from the above.

SENIOR SUBORDINATED PROMISSORY NOTE

US $1,000,000 Date: April 15, 2011

FOR VALUE RECEIVED, the undersigned, HEATWURXAQ, INC., a Delaware corporation (the "Company"), hereby promises to pay to the order of RICHARD GILES (the "Holder"), the principal sum of ONE MILLION DOLLARS (US $1,000,000), payable as set forth below.

1. Principal Payments.

(a) The "Maturity Date" of this Senior Subordinated Promissory Note (the "Subordinated Note") is April 15, 2014. This Subordinated Note shall be due and payable in full on the Maturity Date. In the event that any payment to be made hereunder shall be or become due on a Saturday, Sunday or any other day which is a legal bank holiday under the laws of the State of Utah, such payment shall be or become due on the next succeeding business day.

(b) The Company shall make mandatory principal payments on this Subordinated Note at the dates and in the aggregate amounts as follows:

Date of Payment	Amount of Payment
October 15, 2013	$250,000
December 15, 2013	$250,000
February 15, 2014	$250,000
April 15, 2014	$250,000

In addition to the foregoing mandatory principal payments, the Company may make optional principal payments at any time, which shall reduce the mandatory principal payment obligations in the reverse order of amortization; provided, however, that no payments of principal shall be made unless and until the outstanding aggregate principal balances of the Senior Notes (as defined in Section 4 below) is $200,000 or less.

(c) All payments hereunder shall be applied first to accrued interest and thereafter to principal. The payments of principal and interest hereunder shall be made in coin or currency of the United States of America which at the time of payment shall be legal tender therein for the payment of public and private debts.

2. Interest Payments. The Company promises to pay to the Holder (a) base interest on the principal amount hereof at a rate per annum equal to six percent (6%) (the "Base Interest Rate"); and (b) contingent interest on the principal amount hereof at a rate per annum equal to three percent (3%), determined as provided below in this Section 2 (the "Contingent Interest Rate" and together with the Base Interest Rate, the "Interest Rate"), which interest shall be payable monthly in arrears commencing on May 15, 2011 and on the 15th day of each month thereafter to and including the Maturity Date. Interest shall be calculated on the basis of a year of 360 days and for the number of days actually elapsed. From and after any Event of Default hereunder, interest shall continue to accrue as provided herein at the rate of ten percent (10%) per annum, compounded annually (the "Default Rate"). Interest based on the Contingent Interest Rate shall only be paid with respect to any month if the EBITDA to Interest ratio for such month, after giving effect to the payment of any interest based on the Contingent Interest Rate, is 2.0 or more. For this purpose, "EBITDA" means the earnings of the Company before interest, taxes, depreciation and amortization determined in accordance with generally accepted accounting principles applied on a consistent basis.

3. Security. This Subordinated Not shall be secured by a subordinated security interest in all of the Company's tangible and intangible assets pursuant to that certain Subordinated Security Agreement, between the Company and the Holder, dated as of April 15, 2011 (the "Subordinated Security Agreement").

4. Senior Notes. Concurrently with the issuance of this Subordinated Note, the Company is issuing and delivering Senior Secured Notes dated as of April 15, 2011 in the aggregate principal amount of $1,500,000 (the "Senior Notes") pursuant to the Series A Preferred Stock Purchase Agreement and Senior Secured Notes Purchase Agreement dated April 15, 2011 between the Company and the purchasers of such Senior Notes. The Senior Notes shall be secured by a security interest, senior and prior to the security interest of the holder of this Subordinated Note, in all of the Company's tangible and

intangible assets pursuant to that certain Senior Security Agreement between the Company and the purchasers of the Senior Notes, dated as of April 15, 2011 (the "Senior Security Agreement"). Any and all obligations and liabilities of the Company under this Subordinated Note, including, without limit, principal and interest payments, whether direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or to become due, now existing or later arising and whatever the amount and however evidenced, are subordinated in right of payment to any and all obligations and liabilities of the Company to the holders of the Senior Notes including, without limit, principal and interest payments, whether direct or indirect, absolute or contingent, joint or several, secured or unsecured, due or to become due, now existing or later arising and however evidenced, together with all other sums due thereon and all costs of collecting the same (including, without limit, reasonable attorney fees) for which the Company is liable. Notwithstanding anything to the contrary in this Subordinated Note, the Company may make regularly scheduled payments (but not prepayments, whether voluntary, by acceleration or otherwise) of interest and principal which may come due under this Subordinated Note as and when the same become due and payable in accordance with the terms hereof; provided, however, that the Company may not make any such payments (i) if after giving effect to any such payment, a default or event of default shall have occurred and be continuing under any of the documents evidencing, securing or supporting the Senior Notes, or (ii) after a default or an event of default exists or has occurred under any of the Senior Notes, in which case, all payments on this Subordinated Note must be suspended until such time (if ever) as the defaults or events of default under the Senior Notes have been cured and/or the Senior Notes have been paid in full.

5. No Waiver. No failure or delay by the Holder in exercising any right, power or privilege under this Subordinated Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law. No course of dealing between the Company and the Holder shall operate as a waiver of any rights by the Holder.

6. Waiver of Presentment and Notice of Dishonor. The Company hereby waives presentment, notice of dishonor, protest and all other demands and notices in connection with the delivery, acceptance, performance or enforcement of this Subordinated Note.

7. No Right to Set-Off. All payments by the Company under this Subordinated Note shall be made without set-off or counterclaim and free and clear and without deduction or withholding for any taxes or fees of any nature whatever, unless the obligation to make such deduction or withholding is imposed by law.

8. Place of Payment. All payments of principal of this Subordinated Note and the interest due hereon shall be made at the address of the Holder set forth in Section 13 below or at such other place as the Holder may from time to time designate in writing to the Company.

9. Events of Default. The occurrence (for any reason whatsoever and whether such happening shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) of any one or more of the following events shall constitute an event of default hereunder (each an "Event of Default" and collectively, the "Events of Default"):

(a) if default shall be made in the due and punctual payment of the principal of this Subordinated Note or the interest due hereon when and as the same shall become due and payable, whether at the Maturity Date, or by acceleration or otherwise;

(b) if default shall be made in the due and punctual payment of the principal of the Senior Notes or the interest due thereon when and as the same shall become due and payable, whether at the Maturity Date, or by acceleration or otherwise

(c) if the Company shall:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act;

(iii) make an assignment for the benefit of creditors;

(iv) consent to the appointment of a receiver of the whole or any substantial part of its property;

(v) on a petition in bankruptcy filed against it, be adjudicated as bankrupt; or

(vi) file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof;

(d) if a court of competent jurisdiction shall enter an order, judgment, or decree appointing, without the consent of the Company, a receiver of the whole or any substantial part of Company's property, and such order, judgment or decree shall not be vacated or set aside or stayed within 90 days from the date of entry thereof; or

(e) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of the Company's property and such custody or control shall not be terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

10. Remedies. Subject to the consent of Purchasers holding a majority or more of the outstanding principal balance of this Subordinated Note, in case any one or more of the Events of Default specified in Section 9 hereof shall have occurred, the Holder may proceed to protect and enforce its rights either by suit in equity and/or by action at law, whether for the specific performance of any covenant or agreement contained in this Subordinated Note or the Subordinated Security Agreement or in aid of the exercise of any power granted in this Subordinated Note or the Subordinated Security Agreement, or the Holder may proceed to enforce the payment of all sums due upon this Subordinated Note, or to enforce any other legal or equitable right of the Holder. The Company further promises to pay reasonable attorneys' fees, court costs and any other expenses, losses, charges, damages incurred or advances made by Holder in the protection of its rights or caused by the Company's default under the terms of this Subordinated Note. Notwithstanding the foregoing, the Holder shall not have the right to exercise any of the remedies provided for in this Section 10, or in the Subordinated Security Agreement, unless and until the Senior Notes have been paid in full.

11. Severability. In the event that one or more of the provisions of this Subordinated Note shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Subordinated Note, but this Subordinated Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. Amendment; Waiver. Any term, covenant, agreement or condition of this Subordinated Note may be amended, and compliance therewith may be waived (either generally or in a particular circumstance and either retroactively or prospectively), by one or more substantially concurrent written instruments signed by the Company and by Holder. Any amendment or waiver effected in accordance with this Section 12 shall be binding upon Holder and the Company.

13. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been send by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the following addresses or at such other address as such party may designate by ten (10) days advance written notice to the other party hereto:

If to the Company , at the following address:

HeatwurxAQ, Inc.
136 Heber Avenue, Suite 304
Park City, Utah 84060
Attn: President:

If to the Holder at the following address:

Richard Giles
6300 Sagewood Drive, Suite 400
Park City, Utah 84098

14. Governing Law. This Subordinated Note and the rights and obligations of the Company and the Holder shall be governed by and construed in accordance with the laws of the State of Utah, regardless of the law that might be applied under principles of conflicts of law.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Subordinated Note to be executed and delivered on the date first written above.

HEATWURXAQ, INC.

By: /s/ Larry Griffin
Title: CFO, President

HEATWURX, INC.

AMENDED AND RESTATED

2011 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: OCTOBER 18, 2012
APPROVED BY THE STOCKHOLDERS: OCTOBER 18, 2012
TERMINATION DATE: APRIL 15, 2021

1. GENERAL.

(a) Eligible Stock Award Recipients. The persons eligible to receive Stock Awards are Employees, Directors, Advisors and Consultants.

(b) Available Stock Awards. The Plan provides for the grant of the following Stock Awards: (i) Incentive Stock Options and (ii) Nonstatutory Stock Options.

(c) Purpose. The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Stock Awards as set forth in Section , to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Stock Awards.

2. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee, as provided in Section .

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time (A) which of the persons eligible under the Plan shall be granted Stock Awards; (B) when and how each Stock Award shall be granted; (C) what type or combination of types of Stock Award shall be granted; (D) the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Stock Award fully effective.

(iii) To settle all controversies regarding the Plan and Stock Awards granted under it.

(iv) To accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

(v) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Stock Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. However, except as provided in Section relating to Capitalization Adjustments, to the extent required by applicable law, stockholder approval shall be required for any amendment of the Plan that either (i) materially increases the number of shares of Common Stock available for issuance under the Plan, (ii) materially expands the class of individuals eligible to receive Stock Awards under the Plan, (iii) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (iv) materially extends the term of the Plan, or (v) expands the types of Stock Awards available for issuance under the Plan. Except as provided above, rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 422 of the Code regarding Incentive Stock Options.

(viii) To approve forms of Stock Award Agreements for use under the Plan and to

amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however,* that, the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, and without the affected Participant's consent, the Board may amend the terms of any one or more Stock Awards if necessary to maintain the qualified status of the Stock Award as an Incentive Stock Option or to bring the Stock Award into compliance with Section 409A of the Code and the related guidance thereunder.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

(xi) To effect, at any time and from time to time, with the consent of any adversely affected Optionholder, (1) the reduction of the exercise price of any outstanding Option under the Plan, (2) the cancellation of any outstanding Option under the Plan and the grant in substitution therefor of a new Option under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, or (3) any other action that is treated as a repricing under generally accepted accounting principles; *provided, however*, that no such reduction or cancellation may be effected if it is determined, in the Company's sole discretion, that such reduction or cancellation would result in any such outstanding Option becoming subject to the requirements of Section 409A of the Code.

(c) Delegation to Committee. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(d) Delegation to an Officer. The Board may delegate to one or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Options (and, to the extent permitted by applicable law, other Stock Awards) and the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided, however,* that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Notwithstanding the foregoing, the Board may not delegate authority to an Officer to determine the Fair Market Value of the Common Stock pursuant to Section below.

(e) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Subject to Section relating to Capitalization Adjustments, the aggregate number of shares of Common Stock of the Company that may be issued pursuant to Stock Awards after the Effective Date shall not exceed One Million Eight Hundred Thousand (1,800,000) shares. For clarity, the limitation in this Section is a limitation in the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section does not limit the granting of Stock Awards except as provided in Section . Furthermore, if a Stock Award (i) expires or otherwise terminates without having been exercised in full or (ii) is settled in cash (*i.e.*, the holder of the Stock Award receives cash rather than stock), such expiration, termination or settlement shall not reduce (or otherwise offset) the number of shares of Common Stock that may be issued pursuant to the Plan.

(b) If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares which are forfeited shall revert to and again become available for issuance under the Plan. Also, any shares reacquired by the Company pursuant to Section or as consideration for the exercise of an Option shall again become available for issuance under the Plan. Notwithstanding the provisions of this Section , any such shares shall not be subsequently issued pursuant to the exercise of Incentive Stock Options.

(c) Incentive Stock Option Limit. Notwithstanding anything to the contrary in this Section , subject to the provisions of Section relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be One Million Eight Hundred Thousand (1,800,000) shares of Common Stock unless otherwise amended.

(d) Source of Shares. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock. The total number of shares available for issuance under the Plan shall be One Million Eight Hundred Thousand (1,800,000) shares of Common Stock unless otherwise amended.

4. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards . Incentive Stock Options may be granted only to employees of the Company or a "**parent corporation**" or "**subsidiary corporation**" thereof (as such terms are defined in Sections 424(e) and (f) of the Code). Nonstatutory Stock Options may be granted to Employees, Directors and Consultants.

(b) Ten Percent Stockholders. A holder of 10% or more of the Company's stock (a "**Ten Percent Stockholder**") shall not be granted an Incentive Stock Option without a vote of a majority of the members of the Board (excluding any member of the Board who is the proposed recipient of the grant), and unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

5. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options need not be identical; *provided, however*, that each Option Agreement shall include (through incorporation of provisions hereof by reference in the Option Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section regarding Ten Percent Stockholders, no Option shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Option Agreement.

(b) Exercise Price. Subject to the provisions of Section regarding Ten Percent Stockholders, the exercise price of each Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option if such Option is granted pursuant to an assumption or substitution for another option in a manner consistent with the provisions of Section 424(a) of the Code (whether or not such options are Incentive Stock Options).

(c) Consideration. The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock equal to the Fair Market Value of the aggregate Option exercise price;

(iv) by a "**net exercise**" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however,* that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; *provided, further,* that shares of Common Stock will no longer be outstanding under an Option and will not be exercisable thereafter to the extent that (A) shares are used to pay the exercise price pursuant to the "**net exercise**," (B) shares are delivered to the Participant as a result of such

exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board.

(d) Transferability of Options. The Board may, in its sole discretion, impose such limitations on the transferability of Options as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options shall apply:

(i) Restrictions on Transfer. An Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder.

(ii) Domestic Relations Orders. Notwithstanding the foregoing, an Option may be transferred pursuant to a domestic relations order, *provided, however,* that an Incentive Stock Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be the beneficiary of an Option with the right to exercise the Option and receive the Common Stock or other consideration resulting from the Option exercise.

(e) Vesting of Options Generally. The total number of shares of Common Stock subject to an Option may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of performance goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this Section are subject to any Option provisions governing the minimum number of shares of Common Stock as to which an Option may be exercised.

(f) Termination of Continuous Service. Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, in the event that an Optionholder's Continuous Service terminates (other than for Cause or upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement, which period shall not be less than thirty (30) days unless such termination is for Cause), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(g) Extension of Termination Date. Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than for Cause or upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option as set forth in the Option Agreement.

(h) Disability of Optionholder. Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, in the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six (6) months), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(i) Death of Optionholder. Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, in the event that (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death, or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or

inheritance or by a person designated as the beneficiary of the Option upon the Optionholder's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six (6) months), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate. If the Optionholder designates a third party beneficiary of the Option in accordance with Section , then upon the death of the Optionholder such designated beneficiary shall have the sole right to exercise the Option and receive the Common Stock or other consideration resulting from the Option exercise.

(j) Termination for Cause. Except as explicitly provided otherwise in an Optionholder's Option Agreement, in the event that an Optionholder's Continuous Service is terminated for Cause, the Option shall terminate upon the termination date of such Optionholder's Continuous Service, and the Optionholder shall be prohibited from exercising his or her Option from and after the time of such termination of Continuous Service.

(k) Non-Exempt Employees. No Option granted to an Employee that is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option will be exempt from his or her regular rate of pay.

(l) Right of Repurchase. Subject to the "**Repurchase Limitation**" in Section , the Option may include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Optionholder pursuant to the exercise of the Option. Provided that the "**Repurchase Limitation**" in Section is not violated, the Company shall not be required to exercise its repurchase option until at least six (6) months (or such longer or shorter period of time necessary to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless otherwise specifically provided in the Option Agreement.

(m) Right of First Refusal. The Option may include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Optionholder of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option. Except as expressly provided in this Section 5(m) or in the Stock Award Agreement for the Option, such right of first refusal shall otherwise comply with any applicable provisions of the Bylaws of the Company. The Company will not exercise its right of first refusal until at least six (6) months (or such longer or shorter period of time necessary to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless otherwise specifically provided in the Option Agreement.

6. COVENANTS OF THE COMPANY.

(a) Availability of Shares. During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock reasonably required to satisfy such Stock Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained.

(c) No Obligation to Notify. The Company shall have no duty or obligation to any holder of a Stock Award to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

7. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting a grant by the Company of a Stock Award to any Participant shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when

the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant.

(c) Stockholder Rights. No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms and the Participant shall not be deemed to be a stockholder of record until the issuance of the Common Stock pursuant to such exercise has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Stock Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds one hundred thousand dollars ($100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(f) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (x) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (y) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(g) Withholding Obligations. To the extent provided by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding payment from any amounts otherwise payable to the Participant; (iv) withholding cash from a Stock Award settled in cash; or (v) by such other method as may be set forth in the Stock Award Agreement.

(h) Electronic Delivery. Any reference herein to a "written" agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

(i) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of employment or retirement, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(j) Compliance with Section 409A. To the extent that the Board determines that any Stock Award granted hereunder is subject to Section 409A of the Code, the Stock Award Agreement

evidencing such Stock Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Stock Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued or amended after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Board determines that any Stock Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Board may adopt such amendments to the Plan and the applicable Stock Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Board determines are necessary or appropriate to (1) exempt the Stock Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Stock Award, or (2) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance.

(k) Information Obligation. To the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall deliver financial statements to Participants at least annually. This Section shall not apply to key Employees whose duties in connection with the Company assure them access to equivalent information.

(l) Repurchase Limitation. The terms of any repurchase option shall be specified in the Stock Award, and the repurchase price may be either the Fair Market Value of the shares of Common Stock on the date of termination of Continuous Service or the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price.

8. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board shall proportionately and appropriately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section , (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section , (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards, (iv) the class(es) and maximum number of securities that may be issued under the Plan pursuant to Section . The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

(b) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to the Company's right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase option may be repurchased by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided, however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the holder of the Stock Award or unless otherwise expressly provided by the Board at the time of grant of a Stock Award.

(i) Stock Awards May Be Assumed. Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Stock Awards outstanding under the Plan or may substitute similar stock awards for Stock Awards outstanding under the Plan (including but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Stock Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of a Stock Award or substitute a similar stock award for only a portion of a Stock Award. The terms of any assumption, continuation or substitution shall be set by the Board in accordance with the provisions of Section .

(ii) Stock Awards Held by Current Participants. Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the "**Current Participants**"), the vesting of such Stock Awards

(and, if applicable, the time at which such Stock Awards may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective time of the Corporate Transaction), and such Stock Awards shall terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Stock Awards shall lapse (contingent upon the effectiveness of the Corporate Transaction).

(iii) Stock Awards Held by Persons other than Current Participants. Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, the vesting of such Stock Awards (and, if applicable, the time at which such Stock Award may be exercised) shall not be accelerated and such Stock Awards (other than a Stock Award consisting of vested and outstanding shares of Common Stock not subject to the Company's right of repurchase) shall terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction; *provided, however,* that any reacquisition or repurchase rights held by the Company with respect to such Stock Awards shall not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

(iv) Payment for Stock Awards in Lieu of Exercise. Notwithstanding the foregoing, in the event a Stock Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Stock Award may not exercise such Stock Award but will receive a payment, in such form as may be determined by the Board, equal in value to the excess, if any, of (A) the value of the property the holder of the Stock Award would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise.

(d) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

9. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. Unless sooner terminated by the Board pursuant to Section , the Plan shall automatically terminate on the day before the tenth (10th) anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

10. EFFECTIVE DATE OF PLAN.

This Plan shall become effective on the Effective Date.

11. CHOICE OF LAW.

The law of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

12. DEFINITIONS. As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) "***Affiliate***" means, at the time of determination, any "**parent**" or "**majority-owned subsidiary**" of the Company, as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which "**parent**" or "**majority-owned subsidiary**" status is determined within the foregoing definition.

(b) "***Board***" means the Board of Directors of the Company.

(c) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction "without the receipt of consideration" by the Company.

(d) "***Cause***" means with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or

moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause shall be made by the Company in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated by reason of dismissal without Cause for the purposes of outstanding Stock Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose. Notwithstanding the foregoing, if a Participant has a written employment agreement with the Company that defines "***Cause***", then the definition of Cause in such employment agreement shall be deemed to be controlling for the purposes of this Plan and any Award or Stock Option Agreement issued to such Participant under this Plan.

(e) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (B) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(iv) individuals who, on the date this Plan is adopted by the Board, are members of the Board (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Board; *provided, however,* that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

For the avoidance of doubt, the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

Notwithstanding the foregoing or any other provision of this Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided, however,* that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(f) "***Code***" means the Internal Revenue Code of 1986, as amended.

(g) "***Committee***" means a committee of one (1) or more Directors to whom authority has been delegated by the Board in accordance with Section .

(h) "***Common Stock***" means the common stock of the Company.

(i) "***Company***" means Heatwurx, Inc., a Delaware corporation.

(j) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a "Consultant" for purposes of the Plan.

(k) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, shall not terminate a Participant's Continuous Service; *provided, however*, if the Entity for which a Participant is rendering service ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Participant's Continuous Service shall be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an employee of the Company to a consultant of an Affiliate or to a Director shall not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(l) "***Corporate Transaction***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) the consummation of a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(m) "***Director***" means a member of the Board.

(n) "***Disability***" means the inability of a Participant to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, and shall be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(o) "***Effective Date***" means the effective date of this Plan, which is the earlier of (i) the date that this Plan is first approved by the Company's stockholders, or (ii) the date this Plan is adopted by the Board.

(p) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

(q) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(r) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

(s) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date of the Plan as set forth in Section , is the Owner, directly or indirectly, of securities of the Company representing more than fifty

percent (50%) of the combined voting power of the Company's then outstanding securities.

(t) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) if the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in such source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing sales price (or closing bid if no sales were reported) on the last preceding date for which such quotation exists.

(ii) in the absence of such markets, the Fair Market Value will be determined by the Board (a) in a manner consistent with Section 260.140.50 of Title 10 of the California Code of Regulations and (b) in compliance with Section 409A of the Code or, in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

(u) "***Incentive Stock Option***" means an Option that qualifies as an "incentive stock option" within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(v) "***Nonstatutory Stock Option***" means an Option that does not qualify as an Incentive Stock Option.

(w) "***Officer***" means any person designated by the Company as an officer.

(x) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(y) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(z) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(aa) "***Own***," "***Owned***," "***Owner***," "***Ownership***" A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(bb) "***Participant***" means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(cc) "***Plan***" means this Amended and Restated Heatwurx, Inc. 2011 Equity Incentive Plan.

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

(ee) "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option or a Nonstatutory Stock Option.

(ff) "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(gg) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) .

(hh) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.

APPROVED AND ADOPTED this 18th day of October, 2012

CERTIFICATE OF SECRETARY

I hereby certify that I am the Secretary of Heatwurx, Inc., and that the foregoing Amended and Restated 2011 Equity Incentive Plan (the "**Plan**"), consisting of 16 pages, constitute the Plan of the Company, as duly adopted at a regular meeting of the Board of Directors of the Corporation held October 18, 2012.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of October, 2012.

/s/ Howard J. Kern

Howard J. Kern, Secretary

HEATWURX, INC.
STOCK OPTION AGREEMENT

RECITALS

A. The Board has approved this Agreement for the purpose of retaining the services of Optionee to provide services to the Corporation (or any Parent or Subsidiary).

B. Optionee is to render valuable services to the Corporation (or a Parent or Subsidiary), and this Agreement is executed pursuant to, and is intended to further incentivize Optionee.

C. All capitalized terms in this Agreement shall have the meaning assigned to them in the attached Appendix.

NOW, THEREFORE, it is hereby agreed as follows:

1. **Grant of Option.** The Corporation hereby grants to Optionee, as of the Grant Date, an option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Paragraph 2 at the Exercise Price.

2. **Option Term.** This **option** shall have a term of five (5) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5 or 6.

3. **Limited Transferability.** This option shall be neither transferable nor assignable by Optionee other than by will or by the laws of descent and distribution following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee. However, if this option is designated a Non-Statutory Option in the Grant Notice, then this option may also be assigned in whole or in part during Optionee's lifetime in accordance with the terms of a Qualified Domestic Relations Order. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such Qualified Domestic Relations Order. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Board may deem appropriate.

4. **Dates of Exercise.** This option shall become exercisable for the Option Shares in one or more installments as specified in the Grant Notice. As the option becomes exercisable for such installments, those installments shall accumulate and the option shall remain exercisable for the accumulated installments until the Expiration Date or sooner termination of the option term under Paragraphs 5 or 6.

5. **Cessation of Service.** The option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(a) Should Optionee cease to remain in Service for any reason (other than death, Disability, or Cause) while this option is outstanding, then Optionee shall have a period of three (3) months (commencing with the date of such cessation of Service) during which to exercise this option, but in no event shall this option be exercisable at any time after the Expiration Date.

(b) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or in accordance with the laws of descent and distribution shall have the right to exercise this option. Such right shall lapse and this option shall cease to be outstanding upon the earlier of (i) the expiration of the three (3) month period measured from the date of Optionee's death or (ii) the Expiration Date.

(c) Should Optionee cease Service by reason of Disability while this option is outstanding, then Optionee shall have a period of three (3) months (commencing with the date of such cessation of Service) during which to exercise this option. In no event shall this option be exercisable at any time after the Expiration Date.

(d) Should Optionee's Service be terminated for Cause, then this option shall terminate immediately and cease to remain outstanding.

(e) During the limited period of post-Service exercisability, this option may not be exercised in the aggregate for more than the number of vested Option Shares for which the option is exercisable at the time of Optionee's cessation of Service. Upon the expiration of such limited exercise period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding for any vested Option Shares for which the option has not been exercised. To the extent Optionee is not vested in the Option Shares at the time of Optionee's cessation of Service, this option shall immediately terminate and cease to be outstanding with respect to those shares.

(f) In the event of a Change in Control, the provisions of Paragraph 6 shall govern the period for which this option is to remain exercisable following Optionee's cessation of Service and shall supersede any provisions to the contrary in this paragraph.

Notwithstanding anything to the contrary contained in this Section 5, the option shall stop vesting as of the date of any of the events set forth herein. The unvested portion shall be terminated, and only that portion of the option that is vested prior to the date of the event specified above shall be exercisable.

1. **Special Acceleration of Option**.

(a) In the event of a Change in Control, the exercisability of this option, to the extent outstanding at such time but not otherwise fully exercisable, shall automatically accelerate so that this option shall, immediately prior to the effective date of the Change in Control, become exercisable for any or all of the Option Shares at the time subject to this option as fully-vested shares of Common Stock.

(b) Immediately following the Change in Control, this option, to the extent not previously exercised, shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof) in connection with the Change in Control.

(c) If this option is assumed in connection with a Change in Control, then this option shall be appropriately adjusted, immediately after such Change in Control, to apply to the number and class of securities which would have been issuable to Optionee in consummation of such Change in Control had the option been exercised immediately prior to such Change in Control, and appropriate adjustments shall also be made to the Exercise Price, provided the aggregate Exercise Price shall remain the same.

(d) This Agreement shall not in any way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

1. **Adjustment in Option Shares**. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

2. **Stockholder Rights.** The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become a holder of record of the purchased shares.

3. **Manner of Exercising Option.**

(a) In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or any other person or persons exercising the option) must take the following actions:

(i) Execute and deliver to the Corporation a Notice of Exercise for the Option Shares for which the option is exercised.

(ii) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(A) cash or check made payable to the Corporation; or

(B) a promissory note payable to the Corporation, but only to the extent authorized by the Board in accordance with Paragraph 13.

(C) Should the Common Stock be registered under Section 12(g) of the 1934 Act at the time this option is exercised, then the Exercise Price may also be paid as follows:

(1) in shares of Common Stock held by Optionee (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(2) through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) shall concurrently provide irrevocable written instructions (i) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (ii) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

(3) by a "net exercise" arrangement pursuant to which the Corporation will reduce the number of shares of Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Corporation shall accept a cash or other payment from the Optionee to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided, further, that shares of Common Stock will no longer be outstanding under an Option and will not be exercisable thereafter to the extent that (A) shares are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Optionee as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations;

(iii) Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Notice of Exercise delivered to the Corporation in connection with the option exercise.

(iv) Furnish to the Corporation appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(v) Make appropriate arrangements with the Corporation (or Parent or Subsidiary employing or retaining Optionee) for the satisfaction of all Federal, state and local income and employment tax withholding requirements applicable to the option exercise.

(b) As soon as practical after the Exercise Date, the Corporation shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto.

(c) In no event may this option be exercised for any fractional shares.

1. **Compliance with Laws and Regulations.**

(a) The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Corporation and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any Stock Exchange (or the NASDAQ, if applicable) on which the Common Stock may be listed for trading at the time of such exercise and issuance.

(b) The inability of the Corporation to obtain approval from any regulatory body having authority deemed by the Corporation to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Corporation of any liability with respect to the non-issuance or sale of the Common Stock as to which such approval shall not have been obtained. The Corporation, however, shall use its best efforts to obtain all such approvals.

1. **Successors and Assigns.** Except to the extent otherwise provided in Paragraphs 3 and 6, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Corporation and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

2. **Notices.** Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation at its principal corporate offices. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

3. **Construction.** All decisions of the Board with respect to any question or issue arising under this Agreement shall be conclusive and binding on all persons having an interest in this option.

4. **Governing Law.** The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Delaware without resort to that State's conflict-of-laws rules.

5. **Additional Terms Applicable to an Incentive Option.** In the event this option is designated an Incentive Option in the Grant Notice, the following terms and conditions shall also apply to the grant:

(a) (i) This option shall cease to qualify for favorable tax treatment as an Incentive Option if (and to the extent) this option is exercised for one or more Option Shares: (i) more than three (3) months after the date Optionee ceases to be an Employee for any reason other than death or Disability or (ii) more than twelve (12) months after the date Optionee ceases to be an Employee by reason of Disability.

(b) No installment under this option shall qualify for favorable tax treatment as an Incentive Option if (and to the extent) the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which such installment first becomes exercisable hereunder would, when added to the aggregate value (determined as of the respective date or dates of grant) of any earlier installments of the Common Stock and any other securities for which this option or any other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Corporation or any Parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate. Should such One Hundred Thousand Dollar ($100,000) limitation be exceeded in any calendar year, this option shall nevertheless become exercisable for the excess shares in such calendar year as a Non-Statutory Option.

(c) Should the exercisability of this option be accelerated upon a Change in Control, then this option shall qualify for favorable tax treatment as an Incentive Option only to the extent the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which this option first becomes exercisable in the calendar year in which the Change in Control occurs does not, when added to the aggregate value (determined as of the respective date or dates of grant) of the Common Stock or other securities for which this option or one or more other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Corporation or any Parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate. Should the applicable One Hundred Thousand Dollar ($100,000) limitation be exceeded in the calendar year of such Change in Control, the option may nevertheless be exercised for the excess shares in such calendar year as a Non-Statutory Option.

(d) Should Optionee hold, in addition to this option, one or more other options to purchase Common Stock which become exercisable for the first time in the same calendar year as this option, then the foregoing limitations on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

EXHIBIT 1

NOTICE OF EXERCISE

I hereby notify Heatwurx, Inc. (the "**Corporation**") that I elect to purchase _____ shares of the Corporation's Common Stock (the "**Purchased Shares**") at the option exercise price of $_____ per share (the "**Exercise Price**") pursuant to that certain option (the "**Option**") granted to me.

Concurrently with the delivery of this Exercise Notice to the Corporation, I shall hereby pay to the Corporation the Exercise Price for the Purchased Shares in accordance with the provisions of my agreement with the Corporation (or other documents) evidencing the Option and shall deliver whatever additional documents may be required by such agreement as a condition for exercise. Alternatively, I may utilize the Special broker-dealer sale and remittance procedure specified in my agreement to effect payment of the Exercise Price.

_____, 20__.
Date

_____
Optionee

Address:

_____

_____

Print name in exact manner it is
to appear on the stock certificate: _____

Address to which certificate is to be
sent, if different from address above: _____

_____

Social Security Number: _____

APPENDIX

The following definitions shall be in effect under the Agreement:

A. **Agreement** shall mean this Stock Option Agreement.

B. **Board** shall mean the Corporation's Board of Directors.

C. **Cause** shall mean termination based on (A) the conviction of the Optionee for (x) any crime committed during Optionee's Service constituting a felony in the jurisdiction in which committed, (y) any crime committed during Optionee's Service involving moral turpitude (whether or not a felony) or (z) any other criminal act committed during Optionee's Service against the Corporation involving dishonesty or willful misconduct intended to injure the Corporation (whether or not a felony); (B) substance abuse by the Optionee which is repeated after written notice to the Optionee identifying such abuse; (C) Optionee's insubordination and/or gross negligence as determined in the sole and absolute discretion of Optionee's supervisor, or if there is no supervisor, the majority of the Board of Directors, or (D) the indictment of the Optionee by a grand jury for a felony violation of the federal securities laws.

D. **Change in Control** shall mean and be determined to have occurred if (A) any person ("**Person**") (as such term is used in Sections 13(b) and 14(b) of the 1934 Act) is or becomes the beneficial owner ("**Beneficial Owner**") (as defined in Rule 13d-3 promulgated under the 1934 Act), directly or indirectly, of securities of the Corporation representing fifty percent (50 %) or more of the combined voting power of the then outstanding securities of the Corporation; provided, however, that an Initial Public Offering shall not constitute a Change in Control for purposes of this Agreement; (B) all or substantially all of the assets of the Corporation are sold; or (C) the Corporation is combined with or acquired by another Corporation and the Board shall have determined, either before such event or thereafter, by resolution, that a Change in Control will occur or has occurred.

E. **Code** shall mean the Internal Revenue Code of 1986, as amended.

F. **Common Stock** shall mean the Corporation's common stock.

G. **Corporation** shall mean Heatwurx, Inc., a Delaware corporation, and any corporate successor to all or substantially all of the assets or voting stock of Heatwurx, Inc.

H. **Disability** shall mean the inability or incapacity of the Optionee, due to any medically determined physical or mental impairment, to perform his duties and responsibilities for the Corporation for a total of ninety (90) calendar days in any twelve (12)-month period during Optionee's Service.

I. **Domestic Relations Order** shall mean any judgment, decree or order (including approval of a property settlement agreement) which provides or otherwise conveys, pursuant to applicable State domestic relations laws (including community property laws), marital property rights to any spouse or former spouse of the Optionee.

J. **Exercise Date** shall mean the date on which the option shall have been exercised in accordance with Paragraph 9 of the Agreement.

K. **Exercise Price** shall mean the exercise price per share as specified in the Grant Notice.

L. **Expiration Date** shall mean the date on which the option expires as specified in the Grant Notice.

M. **Fair Market Value** per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the NASDAQ (or any successor system), then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as the price is reported by the NASDAQ (or any successor system). If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Board to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Fair Market Value is to be determined at a time when the Common Stock is not traded on any Stock Exchange or the NASDAQ, then the Fair Market Value shall be determined by the Board after taking into account such factors as the Board shall deem appropriate.

N. **Grant Date** shall mean the date of the Grant Notice.

O. **Grant Notice** shall mean the Notice of Grant of Stock Option accompanying the Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.

P. **Incentive Option** shall mean an option, which satisfies the requirements of Code Section 422.

Q. **1934 Act** shall mean the Securities Exchange Act of 1934, as amended.

R. **Non-Statutory Option** shall mean an option not intended to satisfy the requirements of Code Section 422.

S. **Notice of Exercise** shall mean the notice of exercise in the form attached hereto as Exhibit 1.

T. **Option Shares** shall mean the number of shares of Common Stock subject to the option as specified in the Grant Notice.

U. **Optionee** shall mean the person specified on the Grant Notice.

V. **Parent** shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

W. **Qualified Domestic Relations Order** shall mean a Domestic Relations Order which substantially complies with the requirements of Code Section 414(p). The Board shall have the sole discretion to determine whether a Domestic Relations Order is a Qualified Domestic Relations Order.

X. **Service** shall mean the Optionee's performance of services for the Corporation (or

any Parent or Subsidiary) in the capacity of an Employee, a non-employee member of the board of directors, a consultant, or an independent advisor.

Y. **Stock Exchange** shall mean the American Stock Exchange or the New York Stock Exchange.

Z. **Subsidiary** shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

HEATWURXS, INC.
GRANT NOTICE

Granted:

Grantee:

Address:

Status with the Company: Employee/Officer/Director/Consultant

Type of Option: ISO/NQSO

No. of Shares:

Option Price:

Expiration Date: Five years from date of grant

Vesting Schedule:

By your signature and the signature of the Company's representative below, you and the Company agree that this option is granted under and governed by the terms and conditions of the Amended and Restated 2011 Equity Incentive Plan and the Stock Option Agreement, both of which are attached to and made a part of this document.

Optionee: **Heatwurx, Inc.**

_____ By:

_____ Title:
Print Name

STANDARD OFFICE LEASE

SYRACUSE HILL II

SYRACUSE HILL II, LLC, a Colorado limited liability company
AS LANDLORD

and

HEATWURX, INC., a Delaware corporation

AS TENANT

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STANDARD OFFICE LEASE

STANDARD OFFICE LEASE

THIS STANDARD OFFICE LEASE (the "Lease") is made this 18th day of July, 2012 by and between **SYRACUSE HILL II LLC, a Colorado limited liability company,** as Landlord and **HEATWURX, INC., a Delaware corporation,** as Tenant.

ARTICLE 1.
LEASED PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for the Term (as defined hereinbelow) and upon and expressly subject to the covenants, conditions and terms set forth in this Lease, Suite 315 consisting of approximately 2,244 rentable square feet (the "Leased Premises"), as is shown on the attached Appendix A, which Leased Premises are situated in that certain building located at 6041 S. Syracuse Way, Greenwood Village, Arapahoe County, Colorado, and known as Syracuse Hill II (the "Building"), which Building is situated on that certain parcel of real property (the "Property") legally described in Appendix B, together with a non-exclusive right, subject to the provisions hereof, including any reasonable rules and regulations adopted from time to time by Landlord and any easements, declarations, covenants, conditions, and restrictions now or hereafter recorded with respect to the Property, governing the use thereof, to use all Appurtenances (as defined below) thereto, as hereinafter defined, designated by Landlord for the exclusive or non-exclusive use of tenants of the Building or the Building Complex, as hereinafter defined. The common areas, including without limitation, all plazas, walkways, sidewalks, parking areas and facilities, and other facilities, areas and appurtenances of the Building, any other buildings or the Property, as may be designated from time to time by Landlord (collectively "Appurtenances"), the Building, any other buildings now or hereinafter constructed on the Property, and the Property are hereinafter sometimes collectively called the "Building Complex". Landlord reserves the right to re-measure the Leased Premises and the Building at any time pursuant to the standards of the Building Owners and Management Association ("BOMA") and to adjust any calculations of Base Rent or Tenant's Proportionate Share accordingly.

ARTICLE 2.
PURPOSE

The Leased Premises are to be used for general offices and for no other purpose without the prior written consent of Landlord.

ARTICLE 3.
TERM

Unless earlier terminated as provided for herein, the term of this Lease shall be for a period of thirteen (13) months, commencing at 12:01 a.m., Mountain Standard Time, on July 23, 2012 (the "Commencement Date") and extending until 5:00 p.m., Mountain Standard Time, August 31, 2013 (the "Primary Term"), provided, however, if the Commencement Date occurs on a day other than the first day of a calendar month, the Primary Term shall be measured from the first day of the month next following the month in which the Commencement Date occurs. Subsequent to the Commencement Date, Landlord and Tenant shall execute a Commencement Date Memorandum in the form attached hereto as Appendix D, setting forth the exact date of the commencement and termination of the Primary Term. The Primary Term and any extensions or renewals thereof approved in writing by Landlord, shall collectively be referred to as the "Term".

ARTICLE 4.
COMPLETION OF THE PREMISES

Tenant shall accept the Leased Premises in its "as is" condition. Landlord shall not be deemed to have made any representations or warranties with respect to the suitability of the Leased Premises for Tenant's use, or otherwise, and shall have no other obligation for the completion of the Leased Premises. By taking possession of the Leased Premises, Tenant shall be deemed to have agreed that the same is in good order, repair, and condition, and satisfactorily completed in accordance with Landlord's obligations hereunder.

ARTICLE 5.
RENT

Section 5.1. **Base Rent.** Tenant agrees to pay Landlord during the entire Primary Term the sum of Thirty-Nine Thousand Seventy and 95/100 Dollars ($39,070.95) in monthly installments as detailed below (the "Base Rent"). The first full monthly installment of Base Rent, in the amount of Three Thousand One Hundred Seventy-Nine and 00/100 Dollars ($3,179.00) shall be payable upon execution hereof and each succeeding monthly installment shall be due and payable on or before the first day of each and every successive calendar month thereafter during the Primary Term or any extensions hereof. If the Commencement Date is a date other

than the first day of a calendar month, there shall be due and payable on or before such date as Base Rent for the balance of such calendar month a sum equal to that proportion of the Base Rent for the first full calendar month, as herein provided, which the number of days from the Commencement Date to the end of such calendar month bears to the total number of days in such month. The Base Rent schedule for the Primary Term of the Lease is as follows:

Rentable Sq. Ft. Premises	Time Period	Monthly Base Rent	Period Base Rent
2,244	7/23/2012 - 8/22/2012	$0.00	$0.00
2,244	8/23/2012 - 8/31/2013	$3,179.00	$39,070.95

Section 5.2. **No Offsets.** The Base Rent and all other sums or charges required by this Lease to be paid by Tenant to Landlord, all of which are herein sometimes collectively referred to as "Rent" shall be paid to Landlord without notice or demand, unless expressly provided for herein, and without deduction or offset, in lawful money of the United States of America at the office of Landlord in the Building, or if no such office exists, to Landlord at the address provided in Article 32, or to such other person or place as Landlord may from time to time designate in writing.

Section 5.3. **Interest on Late Payments**. Any Rent or other amount due from Tenant to Landlord under this Lease that is not paid when due shall bear interest from the due date until the date paid at the annual rate of eighteen percent (18%), however, the payment of such interest shall not excuse or cure any default by Tenant under this Lease. The failure to charge or collect such interest in connection with any one or more such late payments shall not constitute a waiver of Landlord's right to charge and collect such interest in connection with any other late payments. The covenants herein to pay Rent shall be independent of any other covenant set forth in this Lease.

Section 5.4. **Late Payment and Return Check Charges**. In addition to the interest charges provided for in the preceding Section 5.3, in the event any Rent owing hereunder is not paid within nine (9) calendar days of the due date, Landlord and Tenant agree that Landlord will incur additional administrative expenses not herein contemplated, the exact amount of which will be difficult if not impossible to determine. Accordingly, Tenant agrees to pay to Landlord an additional one-time late charge for each such late payment in the amount of ten percent (10%) of the amount of such late payment. Notwithstanding the foregoing, Landlord agrees to waive the collection of such late fee two times per Lease year; provided, however, on the third, and each subsequent late payment in any Lease year, a late fee will be due, and the previous late charges will be reinstated. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies under this Lease. There shall be an additional charge of Twenty Dollars ($20.00) for any check submitted by Tenant to Landlord which is returned unpaid by Tenant's bank of depository.

ARTICLE 6.
ADDITIONAL RENT

All other sums as are required to be paid by Tenant under this Lease in addition to Base Rent, including without limitation Operating Costs as defined and determined below in Article 7, shall be referred to as "Additional Rent". All such Additional Rent shall be deemed to be Rent and shall be payable in the manner provided and recoverable as Rent and Landlord shall have all rights specified in this Lease against Tenant for default in payment thereof as in the case of arrears of Rent.

ARTICLE 7.
OPERATING COSTS

Section 7.1. **Initial Operating Costs**. The Base Rent provided for herein is based, in part, upon Landlord's estimate of the Operating Costs, as hereinafter defined, of repairing, maintaining and operating the Building Complex during the calendar years of the Term of this Lease. The "Initial Operating Costs" is stipulated to be the actual Operating Costs per square foot of rentable space in the Building Complex for the Base Year 2012. In the event that the actual Operating Costs, as determined below, for any calendar year during the Term of this Lease following the Base Year, exceeds the Initial Operating Costs, Tenant shall pay its proportionate share (the "Tenant's Proportionate Share") of the year's increase in the actual Operating Costs for such year over the Initial Operating Costs. Tenant's Proportionate Share shall be determined, from time to time by Landlord, by dividing the rentable area of the Leased Premises by the rentable area of the Building. If the Term of this Lease shall begin on a day other than the first day of the calendar year or end on a day other than the last day of the calendar year, Tenant's Proportionate Share of any increase in the Operating Costs for such year shall be prorated, calculated on a daily basis for the fractional year at the beginning or the end of the Term of this Lease.

Section 7.2. **Definition of Operating Costs.** The term "Operating Costs" as used herein shall mean all expenses, costs and disbursements of every kind and nature, including appropriate reserves, which Landlord

shall pay or become obligated to pay because of or in connection with the ownership, operation and maintenance of the Building Complex, including but not limited to, the following:

A. reasonable wages and salaries of all employees, excluding the manager, which is provided for below, directly and actually engaged in the operation, repair, replacement, maintenance or security of the Building Complex, including taxes, insurance, other benefits and overhead related thereto;

B. all supplies and materials used in the operation and maintenance of the Building Complex, including holiday decorations;

C. costs of all utilities and maintenance of utility systems for the Building Complex, including but not limited to the cost of water, power, heating, lighting, air conditioning, ventilating, sewer and trash disposal, except for those costs billed to specific tenants;

D. costs of all third party maintenance and service agreements for the Building Complex, including, but not limited to, alarm service, janitorial service, window cleaning, security service, elevator maintenance, grounds maintenance and heating, ventilating and air conditioning systems to the extent such agreements are not separately billed to specific tenants;

E. costs of all insurance relating to the Building Complex, including, without limitation, the cost of casualty, liability and property damage insurance applicable to the Building Complex and Landlord's personal property used in connection therewith;

F. costs of any repairs and general maintenance to the Building Complex, or any part thereof and the equipment therein (excluding repairs and general maintenance paid by proceeds of insurance, by Tenant or by other third parties, and alterations attributable solely to tenants of the Building Complex);

G. capital investment items, excluding costs of the original construction of the Building or Building Complex, (amortized over the useful life of such item) which reduce Operating Costs or which are required by any governmental order, including the cost of compliance with any laws affecting the Building Complex;

H. professional management fees to manage the Building Complex, including, without limitation, rental for the manager's office space and costs of supplying the manager with necessary office equipment and storage space in the Building Complex, and any amounts directly charged to the Building Complex for the manager's salary plus benefits;

I. accounting, inspection, legal and other consultation fees or expenses of enforcing the rules and regulations of the Building Complex which are incurred in the ordinary course of operating the Building Complex including, without limitation, fees charged by consultants retained by Landlord for services that are intended to produce a reduction in Operating Costs, reduce the rate of increase in Operating Costs, or reasonably improve the operation, maintenance, or state of repair of the Building Complex, and any dues or other assessments charged or imposed as a result of the inclusion of the Building Complex in any metropolitan district or property owners association or sub-association;

J. costs incurred by Landlord, or its agents, in engaging experts or other consultants to assist them in making the computations required hereunder;

K. all real estate taxes and assessments, including without limitation special assessments, imposed upon the Building Complex by any governmental bodies or authorities, and all charges specifically imposed in lieu of such taxes and any costs incurred in connection with appealing or contesting such assessments. The term "taxes" as used in this paragraph K shall not include state, local or federal personal and corporate income taxes measured by the income of Landlord; estate and inheritance taxes, franchise, succession and transfer taxes; interest on taxes and penalties resulting from failure to pay real estate taxes; and ad valorem taxes on Landlord's personal furniture and furnishings, and on Landlord's leasehold improvements to the extent that the same exceed standard building allowances;

L. costs for lighting, heating and cooling, painting and cleaning the Building Complex, costs of maintenance, lighting, sanding, paving repairs, restriping and general maintenance of parking areas, snow and ice removal, rubbish removal and landscaping, costs for repair or replacement of damaged asphalt located in or on the Building Complex and overlays on asphalt located in or on the Building Complex; and

M. costs of licensing, permits, service and usage charges, costs of compliance with all rules and regulations and orders of governmental authorities pertaining to the Building Complex, including those related to engineering and environmental issues, air pollution control and monitoring air quality, and any costs of any environmental clean-up undertaken by Landlord.

"Operating Costs" shall not include:

(i) depreciation of the Building Complex or any equipment used or located therein;

(ii) real estate brokerage commissions;

(iii) legal fees incurred in leasing or in disputes with tenants;

(iv) capital expenditures (except those items expressly specified in subparagraphs A through M above, which shall be allowed as Operating Costs);

(v) cost of construction allowances provided to other tenants;

(vi) interest or principal payments on any mortgage or deed of trust or any ground lease payments;

(vii) any cost or expenditure for which Landlord is reimbursed (other than tax contributions or common area costs);

(viii) costs of any services furnished to other tenants but which Landlord does not make available to or does not otherwise benefit Tenant;

(ix) costs of repairs or maintenance caused or necessitated by the negligence of Landlord, its agents, contractors or employees;

(x) the cost of acquisition of the Property and any costs of original construction of the Building Complex;

(xi) advertising or promotional expenses or any other costs incurred by Landlord in procuring new tenants; and

(xii) any income, excess profits, estate, single business, inheritance, succession, transfer, franchise, excise, capital or other tax assessment upon Landlord or the rentals payable under this Lease.

Section 7.3. Payment of Estimated Increases and Adjustments. For each calendar year during the Term of this Lease following the Base Year, Landlord shall provide Tenant with a comparison of the Initial Operating Costs and the Landlord's reasonable estimate of Operating Costs for such calendar year (the "Estimate Statement"). Tenant shall thereafter pay in advance in monthly installments, with the Base Rent, Tenant's Proportionate Share of any estimated increase in Landlord's Operating Costs of operating the Building Complex over the Initial Operating Costs. Such Estimate Statement may be revised from time to time by Landlord, but no more than one time for every six (6) month period under the Lease. Landlord shall within the period of one hundred twenty (120) calendar days (or as soon thereafter as possible) after the close of each calendar year give Tenant a statement of such year's actual Operating Costs, together with a reconciliation statement comparing the actual increase, if any, of Operating Costs over the Initial Operating Costs, with the estimated increase paid by Tenant during said year. In the event such reconciliation statement reveals an underpayment of the increase in Operating Costs, Tenant shall, within thirty (30) days, pay to Landlord the amount of such underpayment. If, on the other hand, the reconciliation statement reveals an overpayment Landlord shall promptly refund to Tenant the amount of such overpayment or, at Landlord's election, credit such amount to the succeeding monthly installments of Base Rent. Provided, however, no refunds of Operating Costs, or amounts escrowed hereunder, shall be paid to Tenant if Tenant is in default of any of its obligations under the Lease. The failure of Landlord to submit statements provided for herein shall not relieve Tenant of its obligation to pay Tenant's Proportionate Share of Operating Costs.

Section 7.4. Audit. Provided Tenant is not then in default under this Lease (beyond any applicable notice and cure periods), Tenant, at its sole expense, shall have the right at all reasonable times during Landlord's normal business hours, and upon a minimum of fourteen (14) calendar days written notice, to audit Landlord's books and records relating to this Lease at a location designated by Landlord. All such audits shall be performed by a national or regional company with experience in performing such audits. Audit requests shall be limited to the immediately preceding three (3) calendar years, and the year in which the Commencement Date occurs if such year is not within the said three (3) year period. No audit may be conducted for a calendar year, or portion thereof, which falls outside the Term of this Lease. Notwithstanding any of the foregoing, if an audit has previously been conducted for a particular calendar year by this, or any other tenant, Tenant shall accept a copy of the prior audit in lieu of conducting a separate audit. If such audit discloses an overstatement by Landlord, then Landlord shall immediately refund such overage to Tenant; and if such overstatement is in excess of five percent (5%) (excluding any overstatement caused by mathematical, typographical or clerical errors), Landlord shall also reimburse Tenant for the costs of the audit, not to exceed, however, $1,000.00. If, on the other hand, the audit discloses an understatement, Tenant shall immediately pay to Landlord the additional amounts due.

Section 7.5. **Standard of Operation.** Landlord agrees that during the Term of this Lease the Building Complex shall be operated in a reasonable and prudent manner as a suburban office building and that all costs and expenses (including salaries and wages) includable in Operating Costs shall be comparable to the generally prevailing costs which would then be paid or incurred therefor by a reasonably prudent operator of a similar office building in the marketplace generally similar to the Building Complex as determined by Landlord.

Section 7.6. **Minimum Rent**. Notwithstanding anything contained in this Article 7, the Rent payable by Tenant shall in no event be less than the Base Rent specified in Article 5.1 above.

ARTICLE 8.
HOLDING OVER

Should Tenant hold over after the termination of this Lease, whether such termination occurs by lapse of time or otherwise, Tenant shall become a tenant from day-to-day upon each and all of the terms herein provided as may be applicable to such a tenancy, and any such tenancy shall not constitute an extension of this Lease; provided, however, during such period as a tenant from day-to-day, Tenant shall pay all Additional Rent therefor, together with Base Rent at a rate equal to one hundred fifty percent (150%) of the Base Rent which was payable for the month immediately preceding the date of termination of this Lease and, in addition, Tenant shall reimburse Landlord for all damages (consequential as well as direct) sustained by Landlord by reason of Tenant's occupying the Leased Premises past the termination date. Alternatively, at the election of Landlord and expressed in a written notice to Tenant and not otherwise, such retention of possession past the termination date shall constitute a month-to-month tenancy upon each and all of the terms herein provided as may be applicable to such month-to-month tenancy; provided, however, during such period as a tenant from month-to-month, Tenant shall pay Base Rent at a rate equal to one hundred fifty percent (150%) of the Base Rent which was payable for the month immediately preceding the date of termination of this Lease. The provisions of this Article 8 shall not exclude nor waive Landlord's right of re-entry or any other right or remedy hereunder.

ARTICLE 9.
BUILDING SERVICES

Section 9.1. **Standard Services.** Landlord agrees to furnish to the Leased Premises during regular business hours from 7:00 A.M. to 6:00 P.M. Mondays through Fridays and from 9:00 A.M. to 1:00 P.M. Saturdays, except for holidays as the same are determined by Landlord, and subject to the rules and regulations of the Building, heat and air conditioning, which in Landlord's judgment is necessary to provide a reasonably comfortable environment for the use and occupancy of the Leased Premises, and, if necessary, passenger elevator service and, subject to scheduling by Landlord, freight elevator service, if applicable. Landlord shall also furnish: (i) 110 volt, 20 ampere electric current to be supplied for lighting the Leased Premises and public halls, and for the operation of ordinary office equipment, exclusive of heavy-duty equipment, computers, copying equipment, or comparable equipment; (ii) janitorial and cleaning services which in Landlord's judgment is necessary to provide a reasonably clean environment; and (iii) domestic water, in reasonable quantity. Elevator service, if any, shall mean service by non-attended automatic elevators. Landlord shall also furnish, at rates set from time to time, heating and air conditioning at such other times as are not provided for herein, provided Tenant gives Landlord not less than forty-eight (48) hours written notice of Tenant's needs for such additional heating or air conditioning. Landlord shall also, at said times, maintain and keep lighted the common stairs, entries, and toilet rooms in the Building that would reasonably be subject to use by Tenant, its agents and employees during other than regular business hours. Landlord also has the right to charge Tenant for energy costs incurred because of Tenant's above standard service usage or by reason of usage of the Leased Premises or the Building during other than regular business hours.

Section 9.2. **Interruption of Standard Services**. Tenant agrees that Landlord shall not be liable for failure to supply any heating, air conditioning, elevator, janitorial services, electric current, or any other service described in Section 9.1 above during any period when Landlord uses reasonable diligence to restore or to supply such services or electric current, it being further agreed that Landlord reserves the right to temporarily discontinue such services or any of them, or electric current at such times as may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements, or whenever by reason of strikes, lockouts, riots, acts of God, or any other happening or occurrence beyond the reasonable control of Landlord. If Landlord is unable to furnish such services or electric current, Landlord shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as a constructive or actual eviction of Tenant or cause an abatement of rent or operate to release Tenant from any of Tenant's obligations hereunder. Notwithstanding the foregoing, if any interruption of services renders the Leased Premises or any portion of the Leased Premises untenantable for a period longer than five (5) consecutive days after written notice thereof is provided to Landlord, then Tenant shall be entitled to an abatement of Base Rent in proportion to the area of the Leased Premises that is rendered untenantable. Such abatement period shall commence upon the expiration of said five (5) consecutive day period. No such abatement shall be provided if such interruption of service is caused by the negligence or willful misconduct of Tenant, its agents, employees, contractors, subtenants, invitees or

assignees or by an act of God, or by matters

not caused by the Landlord's negligence or by matters not within the control of Landlord (including without limitation the interruption of electrical service to the Building through no fault of Landlord). The Leased Premises shall be considered untenantable if Tenant cannot use the Leased Premises or portion thereof affected in the conduct of its normal business operations as a result of said interruption of service to the Leased Premises. The abatement herein provided shall be Tenant's sole and exclusive remedy for interruption of service. Landlord's obligation to furnish services or electric current shall be conditioned upon the availability of adequate energy sources from the public utility companies then serving the Building Complex. Landlord shall have the right to reduce heating, cooling, or lighting within the Leased Premises and in the public areas in the Building Complex as required by any mandatory or voluntary fuel or energy-saving program. Landlord shall have the right to enter upon the Leased Premises at all reasonable times in order to make such repairs, alterations, and adjustments as shall be necessary in order to comply with the provisions of any voluntary fuel or energy-saving program or any mandatory statute, regulation, or program.

Section 9.3. Services Paid by Tenant. Tenant shall separately arrange with the applicable local public authorities or utilities, as the case may be, for the furnishing of and payment for all telephone services as may be required by Tenant in the use of the Leased Premises. Tenant shall directly pay for such telephone services, including the establishment and connection thereof, at the rates charged for such services by said authority or utility, and the failure of Tenant to obtain or to continue to receive such services for any reason whatsoever shall not relieve Tenant of any of its obligations under this Lease.

Section 9.4. Above-Standard Service Requirements. If heat-generating machines or equipment, including telephone equipment, cause the temperature in the Leased Premises, or any part thereof, to exceed the temperatures the Building's air conditioning system would be able to maintain in such Leased Premises were it not for such heat generating equipment then, Landlord reserves the right to install supplementary air conditioning units in the Leased Premises, and the cost thereof, including without limitation the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord. Tenant shall not, without the written consent of Landlord, use any apparatus or device which will in any way increase the amount of electricity or water which Landlord determines, in Landlord's reasonable opinion, to be reasonable for use of the Leased Premises as general office space, nor connect with electric current (except through existing electrical outlets in the Leased Premises) or water pipes any apparatus or device for the purposes of using electric current, water, or any other energy. If Tenant shall require electric current, water, or any other energy in excess of that which is respectively obtainable from existing electrical outlets or water pipes, and which is, in Landlord's reasonable opinion, above normal for use of the Leased Premises as general office space, Tenant shall first procure the written consent of Landlord, which Landlord may not unreasonably refuse. If Landlord consents to such excess electric, water, or other energy requirements, Tenant shall, on demand, pay all costs of meter service and installation of facilities necessary to measure and/or furnish such excess capacity. Tenant shall also pay the entire cost of such additional electricity, water, or other energy used, including, without limitation, the operation of heavy-duty accounting equipment and copy equipment, computer equipment, and the operation of ordinary office equipment in such numbers that more electric current is required than is necessary for normal business office use as determined by Landlord.

Section 9.5. Cleaning. Tenant shall not provide any janitorial or cleaning services without Landlord's written consent, and then only subject to supervision of Landlord, at Tenant's sole responsibility and cost, and by a janitorial or cleaning contractor or employees at all times satisfactory to Landlord.

Section 9.6. Parking Rental. Tenant shall be entitled to use the non-exclusive surface parking available in the Building Complex's parking lots subject to availability, all of which will be provided at no expense to Tenant during the Term of this Lease. Landlord, at its sole option, shall have the right to assign designated parking spaces to Tenant or designated areas within which Tenant must park at any time during the term of the Lease. Landlord shall be entitled to assign designated areas of the Building Complex's parking lots for use by particular persons or groups of persons and Tenant shall refrain from parking in such spaces. Landlord reserves the right to temporarily eliminate any such parking for construction, maintenance and repair and replacement of Buildings and improvements in the Building Complex. Landlord shall have no liability to Tenant with regard to the Tenant's use of the parking spaces or with regard to availability of parking spaces for Tenant's use. Tenant acknowledges that the Building Complex's parking lots will not be designated for use by Tenant and that Tenant will use the Building Complex's parking lots in common with all persons who have business within the Building Complex to whom or which Landlord grants the right to use such spaces.

Section 9.7. Re-Lamping. Landlord shall have the exclusive right to make any replacement of electric light bulbs, fluorescent tubes and ballasts in the Building Complex throughout the Term of this Lease. Landlord may adopt a system of relamping and reballasting periodically on a group basis in accordance with good management practice.

ARTICLE 10.
USE OF LEASED PREMISES

Section 10.1. **Use.** The Leased Premises shall not be used other than for the purpose set forth in Article 2 of

this Lease. The purpose for which the Leased Premises are used shall at all times comply with all applicable laws, ordinances, regulations, or other governmental ordinances from time to time in existence and any easements, declarations, covenants, conditions, and restrictions now or hereafter recorded with respect to the Property. The Leased Premises shall not be used for any purpose which is related in any manner whatsoever to the marijuana industry (including, but not limited to, a marijuana or medical marijuana dispensary, clinic, paraphernalia shop, grow store, or related use). The Rules and Regulations attached hereto as Appendix C, as well as additional rules and regulations as may be hereinafter adopted from time to time by Landlord for the safety, care and cleanliness of the Leased Premises and the Building Complex and the preservation of good order thereon, are expressly made a part hereof, and Tenant agrees to obey all such Rules and Regulations and any reasonable modifications thereto adopted by Landlord from time to time. Tenant further agrees that it shall not use the Leased Premises in violation of any exclusive right of use granted by the Landlord to any other tenant in the Building Complex.

Section 10.2. Prohibited Use. The Leased Premises shall not be used for any improper or unlawful purpose, or for the carrying on of any barter, trade, or exchange of goods, or sales through promotional give-away gimmicks, or any business involving the sale of second-hand goods, insurance salvage stock, or fire sale stock, and shall not be used for any auction or pawnshop business, any fire sale, bankruptcy sale, going-out-of-business sale, moving sale, bulk sale, or any other business which, because of merchandising methods or otherwise, would tend to lower the first-class character of the Building Complex. Tenant agrees that it will not store, do or permit anything to be done in or about the Leased Premises, nor keep, use, sell, or offer for sale in or upon the Leased Premises any article which may be prohibited by any insurance policy in force from time to time covering the Building Complex or which would cause the cancellation of any such insurance policies. In the event Tenant's occupancy or conduct of business in or on the Leased Premises, whether or not Landlord has consented to the same, results in any increase in premiums for the insurance carried from time to time by Landlord with respect to the Building Complex, Tenant shall pay any such increase in premiums as Rent within ten (10) calendar days after bills for such additional premiums shall be rendered by Landlord. In determining whether increased premiums are a result of Tenant's use or occupancy of the Leased Premises, a schedule issued by the organization computing the insurance rate on the Building Complex showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up such rate. Tenant shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Leased Premises.

Section 10.3. Hazardous Materials.

A. Tenant warrants, covenants and agrees to conduct its business and operations on and from the Leased Premises in strict compliance and accordance with all federal, state and local environmental laws, regulations, executive orders, ordinances and directives now in force or which may hereafter be in force, including, but not limited to, the following: Clean Air Act; Clean Water Act; Resource Conservation and Recovery Act; Toxic Substances Control Act; Hazardous Materials Transportation Act; Comprehensive Environmental Response, Compensation and Liability Act; Emergency Planning and Community Right to Know Act; and all state law counterparts, including, without limitation, the Colorado Hazardous Waste Management Act (collectively referred to as "Environmental Laws"), and any amendments to any such Environmental Laws, and not to cause, suffer or permit any damage or impairment to the health, safety or comfort of any person or to the environment at or on the Leased Premises and surrounding property, including, but not limited to, damage or threatened damage to the soil, air, surface or groundwater resources at the Leased Premises and surrounding property, nor cause, suffer or permit any condition constituting a nuisance or violation of or resulting in liability under any Environmental Laws. Except for such as are a part of the ordinary course of Tenant's business and which are used in compliance with all Environmental Laws and have been approved in writing by Landlord in its sole discretion, Tenant shall not cause or allow anyone else to cause any Hazardous Materials, as herein defined, to be used, generated, stored, brought onto, or disposed of on or about the Leased Premises or the Building Complex without the prior written consent of Landlord, which consent can be withheld at the sole discretion of Landlord, and may be revoked at any time. Tenant shall provide Landlord with immediate notice of any violation of its Environmental Obligations or of any spill, release or discharge of any Hazardous Materials at or affecting the Leased Premises or the Building Complex. For purposes of this Lease, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste which is regulated or becomes regulated under any applicable Environmental Laws. The foregoing obligations of Tenant shall hereinafter collectively be referred to as the "Environmental Obligations." Tenant shall assume sole and full responsibility for and shall remedy at its sole expense all violations by Tenant of such Environmental Obligations.

B. At the commencement of this Lease and on January 1 of each year thereafter throughout the Term of this Lease, and on January 1 of the year after termination of this Lease, Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials which were stored, used or disposed of on the Leased Premises in the preceding Lease year and the names and amounts of all Hazardous Materials which Tenant intends, subject to Landlord's approval, to store, use or dispose of on the Leased Premises in the Lease year just then beginning.

C. Landlord, and its agents, shall have the right, but not the duty, to inspect the Leased Premises and conduct tests and investigations at any time upon reasonable prior notice to determine whether Tenant is complying with the terms of this Lease; provided, however, that Landlord shall take reasonable steps to minimize any interference with Tenant's business operations in connection with such tests and investigations. If Landlord determines from any such inspection, tests or investigations that a violation of Tenant's Environmental Obligations exists or existed with respect to Hazardous Materials, Tenant shall pay to Landlord, upon demand and in addition to all other damages provided for herein, all of Landlord's costs of such inspection, tests and investigations.

D. In the event, of any violation of, or failure to comply with, any of the Environmental Obligations by Tenant, Tenant agrees, at its sole cost and expense, promptly to remedy and correct such violation or failure, including all required or appropriate clean up, clean up-related activities and all other appropriate remedial action. Tenant covenants and agrees to protect, indemnify and hold Landlord harmless from and against any and all obligations, claims, including any investigations, administrative claims and claims for injunctive relief, loss, cost, damage, expense or liability, including, without limitation, any liability arising under any Environmental Laws, plus reasonable attorneys' fees, incurred by or asserted against Landlord resulting from any failure or alleged failure of Tenant to comply with the Environmental Obligations. Landlord shall have the right to defend itself in any action, suit or proceeding commenced against Landlord as a result of Tenant's violation of or alleged failure to comply with the Environmental Obligations, with attorneys and, as necessary, technical consultants chosen by Landlord, and Tenant agrees to pay to Landlord all reasonable attorneys' fees, consultant fees, and other costs in connection therewith incurred by Landlord. In addition, Landlord shall have the right, but not the obligation, to cure Tenant's violation of or failure to comply with the Environmental Obligations, at Tenant's sole expense, and Tenant shall promptly, upon receipt of demand therefor, reimburse Landlord for all amounts expended in connection with such cure. Landlord shall use reasonable efforts to minimize interference with Tenant's business but shall not be liable for any interference caused thereby provided that Landlord acts in a commercially reasonable manner. Neither the written consent by Landlord to the use, generation, storage or disposal of Hazardous Materials, nor the compliance by Tenant with all Environmental Laws shall excuse Tenant from its indemnification of Landlord hereunder, which such indemnification shall survive the termination of this Lease.

E. Landlord covenants and agrees to protect, indemnify and hold Tenant harmless from and against any and all obligations, claims, including any investigations, administrative claims and claims for injunctive relief, loss, cost, damage expense or liability, including without limitation any liability arising under any Environmental Laws, plus reasonable attorneys fees, incurred by or asserted against Tenant resulting from any failure of Landlord to comply with any Environmental Laws or regulation, with respect to the Leased Premises prior to the term of this Lease.

Section 10.4. No Waste. Tenant shall not commit, suffer, or permit any waste, damage, disfiguration, or injury to the Leased Premises or the Building Complex, or permit or suffer any overloading of the floors thereof, and shall not place any safes, heavy business machinery, computers, data processing machines, or other heavy things in the Leased Premises or the Building Complex without first obtaining the written consent of Landlord and, if required by Landlord, of Landlord's architect, and shall not use or permit to be used any part of the Leased Premises or the Building Complex for any dangerous, noxious, or offensive trade or business, and shall not cause or permit any nuisance, or unreasonable noise or action in, at, or on the Leased Premises.

Section 10.5. Protection Against Insurance Cancellation. If any insurance policy on the Building Complex or any part thereof shall be canceled or if cancellation shall be threatened, or if the coverage thereunder shall be reduced or be threatened to be reduced, in any way by reason of the use or occupation of the Leased Premises or any part thereof by Tenant, any assignee or subtenant of Tenant, or by anyone permitted by Tenant to be upon the Leased Premises, and if Tenant fails to remedy the condition giving rise to the cancellation, threatened cancellation, reduction, or threatened reduction of coverage within forty-eight (48) hours after written notice thereof, Landlord may, at its option, enter upon the Leased Premises and attempt to remedy such condition, and Tenant shall forthwith pay the cost thereof to Landlord as Additional Rent, including without limitation, reasonable attorneys' fees incurred by Landlord. Landlord shall not be liable for any damage or injury caused to any property of Tenant or of others located on the Leased Premises as a result of such entry. In the event that Landlord shall be unable to remedy such condition, then Landlord shall have all of the remedies provided for in this Lease in the event of a default by Tenant. Notwithstanding the foregoing provisions of this Article 10, if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligation hereunder, and Landlord shall have no obligation to attempt to remedy, and Landlord may pursue all of its remedies provided for in this Lease in the event of a default by Tenant.

ARTICLE 11.
COMPLIANCE WITH LAW

Tenant shall not use the Leased Premises or permit anything to be done in or about the Leased Premises which will in any way conflict with any law, statute, ordinance, court or administrative order, or governmental rule or

regulation, including without limitation, the Americans with Disabilities Act, now in force or which may hereafter be entered, enacted, promulgated or amended. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, court or administrative orders, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Leased Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in an action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance, or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

ARTICLE 12.
ALTERATIONS AND REPAIRS

Section 12.1. Tenant to Maintain. Except for those matters which are the responsibility of Landlord under Section 12.4 below, Tenant shall, at its sole expense, keep the Leased Premises in good repair and tenantable condition during the Term of this Lease. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, make any alterations, improvements, or additions to the Leased Premises, including, but not limited to, partitions, wall coverings, floor coverings, special lighting installations and "cabling", as hereinafter defined. Provided, however, Tenant shall be allowed to make non-structural, cosmetic alterations, additions or improvements not to exceed $15,000 in value (the "Permitted Alterations") without Landlord's consent, but Tenant shall nonetheless provide Landlord with ten (10) days advance written notice of all such Permitted Alterations, and shall, with such notice, include plans and specifications therefore, if any. In the event that Tenant desires to make any alterations, improvements, or additions, Tenant shall first submit to Landlord written plans and specifications therefor and obtain Landlord's written approval thereof prior to commencing any such work. Landlord agrees to approve or disapprove Tenant's plans and specifications within ten (10) days of delivery of the same to Landlord (Attn: Director of Property Management and Construction), and to provide specific reasons and instructions regarding any disapproved matters. If Landlord fails to so respond within such ten (10) day period, Tenant may provide Landlord a second written request therefore and if Landlord fails to respond within five (5) days after receipt of such second request the plans and specifications shall be deemed approved. All alterations, improvements, or additions, whether temporary or permanent in character, made by Landlord or Tenant in or upon the Leased Premises shall become Landlord's property and shall remain upon the Leased Premises at the termination of this Lease by lapse of time or otherwise, without compensation to Tenant (excepting only the following defined "Tenant's Property": Tenant's movable office furniture; trade fixtures; office and professional equipment; and "cabling" meaning any network-powered broadband, communication and/or coaxial cables installed by or for the benefit of Tenant). All of Tenant's Property and, notwithstanding the foregoing, at Landlord's election, any such other alteration, improvement, or addition made by Tenant which is designated for Tenant's removal pursuant to a written notice thereof from Landlord shall, at Tenant's sole cost be removed upon the termination of this Lease. Tenant shall also, at Tenant's sole cost, repair any damage caused to the Leased Premises or the Building Complex as a result of any such removal and restore the Leased Premises to its condition prior to the installation of Tenant's Property or any other such other alteration, improvement or addition. In the event Tenant fails to perform the repairs required hereunder, Landlord shall be entitled to perform the same and recover from Tenant all costs and expenses thereof, including attorneys fees. The work necessary to make any repairs required pursuant to this Section 12, or to make any alterations, improvements, or additions to the Leased Premises to which Landlord may consent pursuant hereto, shall be at Tenant's cost and done by employees or contractors employed by Landlord, or with Landlord's consent in writing given prior to the letting of a contract, by contractors employed by Tenant, but in each case, only under written contract approved in writing by Landlord, and subject to all conditions Landlord may impose. Tenant shall promptly pay to Landlord or to Tenant's contractors, as the case may be, when due, the cost of all such work and of all decorating or redecorating required by reason thereof, and upon completion, deliver to Landlord, if payment is made directly to Tenant's contractors, evidence of payment and waivers of all liens for labor, services, or materials, and furthermore, Tenant shall defend and hold Landlord, the Leased Premises and the Building Complex harmless from all costs, damages, liens for labor, services or materials and other expenses relating to such work, and shall defend and hold Landlord harmless from all costs, damages, liens, and expenses related thereto, including without limitation reasonable attorneys' fees. In the event that Landlord incurs any expenses in the removal of trash, or the cleaning of elevators, public corridors, loading areas, and other common areas as a result of Tenant's contractors' work, then Tenant agrees it shall reimburse Landlord within seven (7) calendar days of the date of billing.

Section 12.2. Protection Against Liens. At least five (5) calendar days prior to the commencement of any work on the Leased Premises, Tenant shall notify Landlord of the names and addresses of the persons supplying labor and materials for the proposed work so that Landlord may avail itself of the provisions of the Colorado Revised Statutes regulating such matters. During the progress of any such work on the Leased Premises, Landlord or its representatives shall have the right to go upon and inspect the Leased Premises at all reasonable times, and shall have the right to post and keep posted thereon notices such as those provided for by Section 38-22-105(2) (C.R.S. 1973), or any other applicable statute, or to take any further action which

Landlord may deem to be proper for the protection of Landlord's interest in the Leased Premises and the Building Complex.

Section 12.3. Condition on Surrender. Tenant shall, at the termination of this Lease, surrender the Leased Premises to Landlord in as good condition and repair as reasonable and proper use thereof will permit, loss by ordinary wear and tear, fire, and other insured against casualty and condemnation or other condition caused by Landlord excepted. In the event the Leased Premises are not surrendered in such condition, Tenant shall be responsible to Landlord for all damages caused thereby, including for all costs and expenses of repair and replacement to return the Leased Premises to such condition.

Section 12.4. Landlord's Obligations. Subject to Section 12.5 regarding damage caused by Tenant, and the provisions of Article 7 regarding Tenant's obligation for payment of Operating Costs, Landlord shall repair and maintain all of the Appurtenances and the exterior and structural portions of the Building, including the exterior wall and roof and all other property of Landlord, and shall operate, maintain, repair and replace the systems, facilities and equipment necessary for the proper operation of the Building and for the provision of Landlord's services under Article 9 hereof. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need for such repairs or maintenance is given to Landlord by Tenant. There shall be no abatement of Rent by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations, or improvements in or to any portion of the Building Complex or the Leased Premises or in or to fixtures, appurtenances and equipment therein. Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereinafter in effect.

Section 12.5. Damage by Tenant. Any cost or expense incurred by Landlord for the maintenance, repair or replacement of any part of the Building Complex, or any other property of Landlord which is due to the negligence, carelessness, misuse or excessive use of Tenant, its servants, agents, employees, or anyone permitted by Tenant to be in or on the Building Complex, or through Tenant or such parties shall be borne solely by Tenant, who shall, on demand, forthwith pay the same to Landlord as Rent.

ARTICLE 13.
ABANDONMENT

Tenant shall not vacate or abandon the Leased Premises at any time during the Term hereof, and if Tenant shall abandon, vacate, or surrender (whether at the end of the Primary Term or otherwise) the Leased Premises, or shall be dispossessed by process of law or otherwise, then any personal property belonging to Tenant and left on the Leased Premises shall be deemed abandoned. Provided, however, no such abandonment shall operate to relieve or release Tenant from its obligations pursuant to Section 12.1 hereof.

ARTICLE 14.
ASSIGNMENT AND SUBLETTING

Section 14.1. Limitation on Assignment or Subletting. Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Leased Premises, or any part thereof, or any right or privilege appurtenant thereto, or shall not suffer any other person to occupy or use the Leased Premises or any portion thereof, without the prior written consent of Landlord, which consent may be withheld except as hereinafter expressly otherwise provided. Landlord agrees not to withhold consent to any proposed assignment of Tenant's entire interest in this Lease or to a subletting of the entire Leased Premises for all of the then remaining term of this Lease less one (1) day, provided Tenant requests the same in writing, and provided: (i) at the time thereof, Tenant is not in default under this Lease, beyond any applicable notice and cure periods; (ii) Landlord, in its discretion reasonably exercised, determines that the reputation, business, proposed use of the Leased Premises, and financial responsibility of and by the proposed assignee or sublessee, as the case may be, are satisfactory to Landlord; (iii) any assignee shall expressly assume all the obligations of this Lease on Tenant's part to be performed; (iv) such consent, if given, shall not release Tenant of any of its obligations (including, without limitation, its obligation to pay Rent) under this Lease; and (v) Tenant and/or Tenant's assignee in the case of an assignment specifically agree to pay over to Landlord, as Rent, all sums provided to be paid under the terms and conditions of such sublease or assignment which would be in excess of the amounts otherwise required to be paid by Tenant pursuant to this Lease. Any assignment, subletting, or occupancy without Landlord's prior written consent shall be void and shall, at the option of Landlord, constitute a default under this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law without the written consent of Landlord, which consent may be arbitrarily withheld.

Section 14.2. Acceptance of Performance No Waiver. If this Lease be assigned, or if the Leased Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, after the occurrence of any default under this Lease, collect the Rent from the assignee, subtenant, or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed an acceptance of the assignee, subtenant or occupant as the Tenant hereof, or constitute a release of Tenant from further performance by Tenant of all covenants on the part of Tenant herein contained. A sale by

Tenant of all or substantially all of its assets or all or substantially all of its stock, if Tenant is a publicly traded corporation, a merger of Tenant with another corporation, or the transfer of twenty-five percent (25%) or more of the stock in a corporate tenant whose stock is not publicly traded, or the transfer of twenty-five percent (25%) or more of the beneficial ownership interests in a partnership tenant, without the prior written consent of Landlord shall constitute a prohibited assignment hereunder. Consent by Landlord to any one assignment or subletting shall not in any way be construed as relieving Tenant from obtaining the Landlord's express written consent to any further assignment or subletting. Notwithstanding the consent of Landlord to any subletting or assignment, Tenant shall not be relieved from its primary obligations hereunder to Landlord including, but not limited to, the payment of all Rent, taxes and insurance premiums as herein provided, and Tenant's Proportionate Share of Operating Costs.

Section 14.3. Landlord to Approve Documents. All documents utilized by Tenant to evidence any subletting or assignment to which Landlord has consented shall be subject to prior approval by Landlord or its attorney. Tenant shall pay on demand all of Landlord's actual reasonable costs and expenses, not to exceed $500.00 including reasonable attorneys' fees, incurred in determining whether or not to consent to any requested subletting or assignment and in reviewing and approving such documentation. All public advertisements of the assignment of the Lease or sublet of the Leased Premises, or any portion thereof, shall be subject to the prior approval of Landlord, which approval may not be unreasonably withheld or denied.

ARTICLE 15.
SIGNS AND ADVERTISING

Tenant shall not install, paint, display, inscribe, place, or affix any sign, picture, advertisement, notice, lettering, or direction in the interior of the Leased Premises which is visible from the outside of the Building. Landlord will prescribe a uniform pattern of identification signs for Tenant, to be placed on the outside of the doors leading into the Leased Premises, and other than such identification signs, Tenant shall not install, paint, display, inscribe, place, affix, or otherwise attach, any sign, picture, advertisement, notice, lettering, or direction on the outside of the Leased Premises for exterior view without the prior written consent of Landlord. Tenant shall be provided standard building directory and suite signage.

ARTICLE 16.
DAMAGE TO PROPERTY, INJURY TO PERSONS

Section 16.1. Tenant's Waiver of Claims. Tenant, as a material part of the consideration to be rendered to Landlord under this Lease, to the extent permitted by law, hereby waives all claims (except claims caused by or resulting from the gross negligence of Landlord, its agents, servants, or employees) which Tenant, Tenant's successor, or permitted assigns may have against Landlord, its agents, servants, or employees for loss, theft, or damage to property and for injuries to persons, including death, in, upon, or about the Leased Premises, the Building, or the Building Complex, from any cause whatsoever. Tenant will protect, defend, indemnify, and hold Landlord, its agents, servants, and employees exempt and harmless from and on account of any damage or injury to person, including death, or to the goods, wares, and merchandise of any person, including the loss of the use thereof, occasioned by Tenant's use or occupancy of or otherwise arising in any manner from, on, or out of the Leased Premises, other than that caused by or resulting from the gross negligence of Landlord.

Section 16.2. Negligence of Third Parties. Neither Landlord nor its agents, servants, or employees shall be liable to Tenant for any damage by or from any act or negligence of any other tenant or occupant of the Building or by any owner or occupant of adjoining or contiguous property. Tenant agrees to pay for all damage to the Building Complex, the Leased Premises, as well as all damage to tenants or occupants thereof caused by Tenant's misuse or neglect of the Leased Premises, its apparatus or appurtenances, or caused by any licensee, contractor, agent, or employee of Tenant. Notwithstanding the foregoing provisions, neither Landlord nor Tenant shall be liable to one another for any loss, damage, or injury caused by its act or neglect to the extent that the other party is required to obtain insurance coverage against such loss, damage or injury under the provisions of this Lease.

Section 16.3. Tenant's Property. Particularly, but not in limitation of the foregoing paragraph, all property belonging to Tenant, or any occupant of the Leased Premises, that is in the Building or the Leased Premises, shall be there at the risk of Tenant or other person only, and Landlord or its agents or employees (except in the case of gross negligence of Landlord or its agents or employees) shall not be liable for: (i) damage to or theft of or misappropriation of such property; (ii) any damage to property entrusted to Landlord, its agents, or employees, if any; (iii) loss of or damage to any property by theft or otherwise, by any means whatsoever; (iv) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, snow, water, or rain which may leak from any part of the Building or from the pipes, appliances, or plumbing works therein or from the roof, street, subsurface, or from any other place, or resulting from dampness or any other cause whatsoever; (v) interference with the light, air, or other incorporeal hereditament; or (vi) any latent defect in the Leased Premises or the Building Complex. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Leased Premises or in the Building Complex or of observed defects therein or in the fixtures or equipment.

Section 16.4. **Tenant to Perform**. In the event that any action or proceeding shall be brought against Landlord by reason of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant, its agents, or employees, then Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord, and Tenant hereby agrees to hold Landlord harmless from and against all liability resulting therefrom, including, without limitation, reasonable attorneys' fees.

Section 16.5. **Indemnification by Landlord**. Subject to the provisions of Sections 16.1 through 16.4, above, and Article 27, below, Landlord shall indemnify, defend and hold harmless Tenant against and from any and all claims, causes of action, liabilities, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising from bodily injury (including death) or property damage caused by any gross negligence or willful misconduct of Landlord occurring on or about the Building Complex during the Term of this Lease. In no event shall Landlord be obligated to indemnify Tenant for any willful or negligent acts or omissions of or breach of this Lease by Tenant.

ARTICLE 17.
TENANT'S INSURANCE

Tenant shall, during the entire Term of this Lease, at its sole cost and expense, obtain, maintain, and keep in full force and effect the following types of insurance:

Section 17.1. **Fire and Extended Coverage**. Fire and extended coverage insurance, including endorsements for vandalism, malicious mischief, theft, sprinkler leakage, covering all of Tenant's property, including, but not limited to, furniture, fittings, installations, alterations, additions, partitions, fixtures, other personal property in an amount equal to the full replacement cost of such property without deduction for depreciation.

Section 17.2. **Public Liability.** Public liability insurance, including bodily injury, property damage, and personal injury, with respect to all claims, demands, or actions by any person, firm, or corporation occurring in or about the Leased Premises, or in any way arising from, related to, or connected with the conduct and operation of Tenant's business in the Leased Premises or Tenant's use of the Leased Premises, and assumed contractual liability with respect to liabilities assumed by Tenant under this Lease. Such policies shall be occurrence based and shall be written on a comprehensive basis, with limits not less than $1,000,000.00, and such higher limits as Landlord or the mortgagees of Landlord may reasonably require from time to time.

Section 17.3. **Business Interruption**. Business interruption insurance in such amounts as will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Leased Premises or to the Building as a result of such perils.

Section 17.4. **Other Insurance.** Any other form or forms of insurance as the mortgagees of Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself, including, without limitation, Worker's Compensation Insurance.

Section 17.5. **Certificates**. All policies shall be taken out with insurers acceptable to Landlord and in form satisfactory from time to time to Landlord, shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry, and shall name the Landlord as an additional insured. Tenant agrees that certificates of insurance or, if required by Landlord or the mortgagees of Landlord, certified copies of each such insurance policy shall be delivered to Landlord as soon as practicable after the placing of the required insurance, but in no event later than twenty (20) calendar days after Tenant takes possession of all or any part of the Leased Premises. All policies shall require that at least thirty (30) calendar days, prior written notice be delivered to Landlord by the insurer prior to termination, cancellation, or material change in such insurance.

Section 17.6. **Use of Proceeds**. Tenant agrees that in the event of damage or destruction to the leasehold improvements on the Leased Premises covered by insurance required to be taken out by Tenant pursuant to this Article 17, Tenant shall use the proceeds of such insurance for the purpose of repairing or restoring such leasehold improvements. In the event of damage or destruction of the Building entitling the Landlord to terminate this Lease pursuant to Article 18 hereof, then, if the Leased Premises have also been damaged, Tenant will pay to Landlord all of its insurance proceeds relating to the leasehold improvements in the Leased Premises, and if the Leased Premises have not been damaged, Tenant will deliver to Landlord, in accordance with the provisions of this Lease, the leasehold improvements and the Leased Premises.

ARTICLE 18.
DAMAGE OR DESTRUCTION

Section 18.1. Right to Terminate. In the event the Leased Premises or the Building are damaged by fire or other insured casualty, and the insurance proceeds have been made available therefor by the holder or holders of any mortgages or deeds of trust covering the Building, the damage shall be repaired by and at the expense of Landlord to the extent of such insurance proceeds available therefor, provided such repairs can, in Landlord's sole opinion, be completed within one hundred twenty (120) calendar days after the occurrence of such damage, without the payment of overtime or other premiums. Until such repairs are completed, the Rent shall be abated in proportion to the part of the Leased Premises which is unusable by Tenant in the conduct of its business; provided, however, if the damage is due to the fault or neglect of Tenant or its employees, agents, or invitees, there shall be no abatement of Rent. If repairs cannot, in Landlord's sole opinion, be made within said one hundred twenty (120) calendar day period, Landlord shall notify Tenant within twenty-five (25) calendar days of the date of occurrence of such damage as to whether or not Landlord shall have elected to make such repairs. If Landlord elects not to make such repairs which cannot be completed within one hundred twenty (120) calendar days, then either party may, by written notice to the other, cancel this Lease as of the date of the occurrence of such damage. Provided, however, Tenant shall in such case not have the right to terminate the Lease if the damage is due to the fault or neglect of Tenant or its employees, agents or invitees. In the event that the Leased Premises or Building is damaged such that more than thirty-three percent (33%) of the same is rendered untenantable, or if insurance proceeds are insufficient or unavailable to repair the damage, Landlord may, at its sole option, terminate this Lease by written notice to Tenant given not more than thirty (30) days after the occurrence of the damage. Except as provided in this Section 18, there shall be no abatement of Rent and no liability of Landlord by reason of any injury, inconvenience, temporary limitation of access or interference to or with Tenant's business or property arising from the making of any necessary repairs, or any alterations or improvements in or to any portion of the Building or the Leased Premises, or in or to fixtures, appurtenances, and equipment therein necessitated by such damage. Tenant understands that Landlord will not carry insurance of any kind on Tenant's furniture and furnishings or on any fixtures or equipment removable by Tenant under the provisions of this Lease, and that Landlord shall not be required to repair any injury or damage caused by fire or other cause, or to make any repairs or replacements to or of improvements installed in the Leased Premises by or for Tenant at Tenant's cost. Unless Landlord has notified Tenant that the Lease shall be terminated, Tenant shall be required to restore all leasehold improvements, fixtures or personal property to their condition prior to the date of such damage, not later than thirty (30) days, or as soon thereafter as is reasonably possible, after the date by which Landlord has repaired damage to the Leased Premises, whether or not insurance proceeds are available to Tenant for such purpose.

Section 18.2. Landlord's Insurance. Landlord covenants and agrees that, throughout the Term hereof, it will insure the Building (excluding foundations, excavations and other non-insurable items) and the machinery, boilers, and equipment contained therein owned by Landlord (excluding any property with respect to which Tenant is obliged to insure pursuant to the provisions of Section 17 hereof) against damage by fire and extended perils coverage in such reasonable amounts as would be carried by a prudent owner of a similar property in the same locale. Landlord will also, throughout the Term, carry public liability and property damage insurance with respect to the operation of the Building in reasonable amounts as would be carried by a prudent owner of a similar property in the same locale. Landlord may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the mortgagees of Landlord may reasonably determine to be advisable. The cost of all such insurance shall be an Operating Cost pursuant to Article 7. Notwithstanding the contribution by Tenant to the cost of insurance premiums, as provided herein, Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord, and that such insurance will be for the sole benefit of Landlord, with no coverage for Tenant for any risk insured against.

ARTICLE 19.
ENTRY BY LANDLORD

Landlord and its agents shall have the right to enter the Leased Premises at all reasonable times and upon reasonable prior notice to Tenant, except in the case of an emergency or routine maintenance or services for which no notice shall be required, for the purpose of examining or inspecting the same, to supply janitorial services and any other services to be provided by Landlord to Tenant hereunder, to show same to prospective purchasers or tenants of the Building, and to make such alterations, repairs, improvements, or additions, whether structural or otherwise, to the Leased Premises or to the Building Complex as Landlord may deem necessary or desirable and may for that purpose erect temporary scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the entrance to the Leased Premises shall not be unreasonably blocked thereby. Landlord may enter by means of a master key, without liability to Tenant except for any failure to exercise due care for Tenant's property, and without affecting this Lease. Landlord shall use reasonable efforts on any such entry not to unreasonably interrupt or interfere with Tenant's use or occupancy of the Leased Premises.

ARTICLE 20.
DEFAULT BY TENANT

Section 20.1. Events of Default. Each one of the following events is herein referred to as an "Event of Default":

A. Tenant shall fail to make due and punctual payment of any Rent within five (5) days after receiving written notice from Landlord;

B. Tenant shall vacate or abandon the Leased Premises;

C. Tenant shall cause or allow any lien or other encumbrance of title to be filed or recorded against the Building Complex;

D. This Lease or the estate of Tenant hereunder shall be transferred to or shall pass to or devolve upon any other person or party except in the manner set forth in Article 14;

E. This Lease or the Leased Premises or any part thereof shall be taken upon execution or by other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, and said attachment shall not be discharged or disposed of within fifteen (15) calendar days after the levy thereof;

F. The filing of any petition or the commencement of any case or proceeding by the Tenant under any provision or chapter of the Federal Bankruptcy Act, the Federal Bankruptcy Code or any other federal or state law relating to insolvency, bankruptcy or reorganization; or the adjudication that the Tenant is insolvent or bankrupt, or the entry of an order for relief under the Federal Bankruptcy Code with respect to Tenant;

G. The filing of any petition or the commencement of any case or proceeding described in Section 20.1 (E) above against the Tenant, unless such petition and all proceedings initiated thereby are dismissed within sixty (60) calendar days from the date of such filing; the filing of an answer by Tenant admitting the allegations of any such petition; or the appointment of or taking possession by a custodian, trustee or receiver for all or any assets of the Tenant, unless such appointment is vacated or dismissed within sixty (60) calendar days from the date of such appointment or taking of such possession;

H. The insolvency of the Tenant or the execution by the Tenant of an assignment for the benefit of creditors; or the convening by Tenant of a meeting of its creditors, or any class thereof, for the purposes of effecting a moratorium upon or extension or composition of its debts; or the failure of the Tenant to generally pay its debts as they mature;

I. Tenant shall fail to take possession of the Leased Premises thirty (30) calendar days following the Commencement Date; or

J. Tenant shall fail to perform any of the other agreements, terms, covenants or conditions hereof on Tenant's part to be performed, and such non-performance shall continue for a period of fifteen (15) calendar days after written notice thereof by Landlord to Tenant, or if such performance cannot be reasonably had within such fifteen (15) calendar day period, Tenant shall not in good faith have commenced such performance within such fifteen (15) calendar day period and shall not thereafter diligently proceed to completion.

Section 20.2. Remedies of Landlord. If any one or more events of default shall happen, then Landlord shall have the right at Landlord's election, then or at any time thereafter, without demand or notice, to reenter and take possession of the Leased Premises or any part thereof and repossess the same as Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or breach of covenants or prior conditions. After recovering possession of the Leased Premises, Landlord shall use commercially reasonable efforts to mitigate its damages. Should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law including a proceeding for possession pursuant to Colorado's Forcible Entry and Unlawful Detainer Statutes, Landlord may, from time to time, either:

A. Without terminating this Lease, attempt to relet the Leased Premises or any part thereof, either alone or in conjunction with other portions of the Building of which the Leased Premises are a part, in Landlord's or Tenant's name, but for the account of Tenant, for such term or terms (which may be greater or less than a period which would otherwise have constituted the balance of the term of this Lease) and on such conditions and upon such other terms (which may include necessary concessions of free rent and alteration and repair of the Leased Premises) as Landlord, in its sole discretion, may determine, and Landlord may collect and receive the Rents therefor. If Landlord elects to attempt to relet the Leased Premises the following provisions shall apply:

(1) Landlord shall use reasonable efforts to relet the Leased Premises after all other space available for leasing in the Building has been let, but, Landlord shall not have any duty to lease the Leased Premises below the then current market rental rates being obtained for competing office buildings in the Denver Metropolitan area and shall in no way be responsible or liable for any failure to relet the Leased Premises, or any part thereof, or for any failure to collect any Rent due upon such reletting;

(2) No such reentry or taking possession of the Leased Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant;

(3) No notice from Landlord hereunder or under a forcible entry and unlawful detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right following any such reentry and/or reletting to exercise its right to terminate this Lease by giving Tenant such written notice, in which event the Lease will terminate as specified in said notice;

(4) If Landlord elects to take possession of the Leased Premises as provided in this Section 20.2 without terminating the Lease, Tenant shall pay to Landlord (a) the Rent and other sums as herein provided, which would be payable hereunder if such repossession had not occurred, less (b) the net proceeds, if any, of any reletting of the Leased Premises after deducting all Landlord's expenses in connection with such reletting, including, but without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration, remodeling and repair costs and expenses of preparation for such reletting; and

(5) If, in connection with any reletting, the new lease term extends beyond the existing term, or the Leased Premises covered thereby include other leased premises not part of the Leased Premises, a fair apportionment of the rent received from such reletting and the expenses incurred in connection therewith as provided aforesaid will be made in determining the net proceeds received from such reletting. In addition, in determining the net proceeds from such reletting, any rent concessions will be apportioned over the term of the new lease. Tenant shall pay such other amounts to Landlord monthly on the days on which the Rent and all other amounts owing hereunder would have been payable if possession had not been retaken and Landlord shall be entitled to receive the same from Tenant on each such day.

B. Give Tenant written notice of intention to terminate this Lease on the date of such given notice, or on any later date specified therein, and on the date specified in such notice, Tenant's right to possession of the Leased Premises shall cease and the Lease shall thereupon be terminated, except as to Tenant's liability hereunder as hereinafter provided, as if the expiration of the term fixed in such notice were the end of the term herein originally demised. In the event this Lease is terminated pursuant to the provisions of this paragraph B, or terminated pursuant to a proceeding for possession under the Colorado Forcible Entry and Unlawful Detainer Statutes, Tenant shall remain liable to Landlord for damages in an amount equal to the Rent and other sums which would have been owing by Tenant hereunder for the balance of the then current Term had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Leased Premises by Landlord subsequent to such termination, after deducting all Landlord's expenses in connection with such reletting, including, but without limitation, the expenses enumerated in paragraph A above. Landlord shall be entitled to collect such damages from Tenant monthly on the days on which the Rent and other amounts would have been payable hereunder if this Lease had not been terminated, and Landlord shall be entitled to receive the same from Tenant on each such day. Alternatively, at the option of Landlord, in the event this Lease is terminated, Landlord shall be entitled to recover forthwith against Tenant as damages for loss of the bargain and not as a penalty, an amount equal to the worth, at the time of termination, of the excess, if any, of the amount of Rent reserved in this Lease for the balance of the then current Term of the Lease over the then reasonable rental value of the Leased Premises for the same period plus all amounts incurred by Landlord in order to obtain possession of the Leased Premises and relet the same, including attorneys' fees, reletting expenses, alterations and repair costs, brokerage commissions and all other like amounts.

Section 20.3. Cumulative Remedies. Suit or suits for the recovery of the Rent and other amounts and damages set forth hereinabove may be brought by Landlord, from time to time, at Landlord's election, and unless expressly so provided, nothing herein shall be deemed to require Landlord to postpone the filing of such suit. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise including but not limited to suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. All such rights and remedies shall be considered cumulative and non-exclusive. All costs incurred by Landlord in connection with collecting any Rent or other amounts and damages owing by Tenant pursuant to the provisions of this Lease, or to enforce any provision of

this Lease, including reasonable attorneys' fees from the date such matter is turned over to an attorney, whether or not one or more actions are commenced by Landlord, shall also be recoverable by Landlord from Tenant.

Section 20.4. No Waiver. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent or any other amounts owing by Tenant during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Notwithstanding any termination of this Lease, the same shall continue in force and effect as to any provisions which require observance or performance by Landlord or Tenant subsequent to such termination.

Section 20.5. Bankruptcy. Nothing contained in this Article 20 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowed by any statute or rule of law governing such a proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal or less than the amounts recoverable, either as damages or Rent, referred to in any of the preceding provisions of this Article 20. Notwithstanding anything contained in this Article 20 to the contrary, any such proceeding or action involving bankruptcy, insolvency, reorganization, arrangement assignment for the benefit of creditors, or appointment of a receiver or trustee, as set forth above, shall be considered to be an event of default only when such proceeding, action or remedy shall be taken or brought by or against the then holder of the leasehold estate under this Lease.

Section 20.6. Interest on Landlord's Advances . Any amounts paid by Landlord to cure any defaults of Tenant hereunder, which Landlord shall have the right, but not the obligation, to do, shall, if not repaid by Tenant within nine (9) calendar days of demand by Landlord, thereafter bear interest at the rate of eighteen percent (18%) per annum.

ARTICLE 21.
TAXES

During the Term hereof, Tenant shall pay, prior to delinquency, all business and other taxes, charges, notes, duties and assessments levied, and rates or fees imposed, charged, or assessed against or in respect of Tenant's occupancy of the Leased Premises or in respect of the personal property, trade fixtures, furnishings, equipment, and all other personal property of Tenant contained in the Leased Premises, and shall hold Landlord harmless from and against all payment of such taxes, charges, notes, duties, assessments, rates, and fees, and against all loss, costs, charges, notes, duties, assessments, rates, and fees, and any and all such taxes. Tenant shall cause said fixtures, furnishings, equipment, and other personal property to be assessed and billed separately from the real and personal property of Landlord. In the event any or all of Tenant's fixtures, furnishings, equipment, and other personal property shall be assessed and taxed with Landlord's real property, Tenant shall pay to Landlord Tenant's share of such taxes within twenty (20) calendar days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property. Tenant shall also pay, as an Operating Cost as determined under Article 7, its Proportionate Share of all real estate taxes, general or special, all public rates, dues and special assessments of every kind or nature which shall become due and payable or which are assessed against or levied upon the Building Complex during the Term of this Lease.

ARTICLE 22.
EMINENT DOMAIN

If the Building, or a substantial part thereof, or a substantial part of the Leased Premises, shall be lawfully taken or condemned (or conveyed under threat of such taking or condemnation) for any public or quasi-public use or purpose, the Term of this Lease shall end upon, and not before, the date of the taking of possession by the condemning authority, and without apportionment of the award. Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Current Rent shall be apportioned as of the date of such termination. If any part of the Building, other than the Leased Premises, not constituting a substantial part of the Building, shall be so taken or condemned (or conveyed under threat of such taking or condemnation), or if the grade of any street adjacent to the Building Complex is changed by any competent authority and such taking or change of grade makes it necessary or desirable to substantially remodel, replace or restore any part of the Building Complex, Landlord shall have the right to cancel this Lease upon not less than ninety (90) calendar days' notice prior to the date of cancellation designated in the notice. No money or other consideration shall be payable by Landlord to Tenant for the right of cancellation, and Tenant shall have no right to share in any condemnation award, or in any judgment for damages, or in any proceeds of any sale made under any threat of condemnation or taking. In the event this Lease is not canceled, the Lease shall continue in full force and effect, without abatement or reduction of rental due hereunder. Notwithstanding the foregoing, nothing

contained herein shall prevent Tenant from commencing a separate proceeding against the condemning authority to recover any award it may be entitled to as a result of such taking or condemnation.

ARTICLE 23.
SUBORDINATION TO MORTGAGES AND DEEDS OF TRUST

Section 23.1. **Lease Subordinate to Mortgages**. This Lease and the rights of Tenant hereunder shall be and are hereby made subject and subordinate to the lien of any mortgages or deeds of trust now or hereafter existing against the Building, the Property or both, and to all renewals, modifications, consolidations, replacements and extensions thereof and to all advances made, or hereafter to be made, upon the security thereof. Although such subordination shall be self operating, Tenant, or its successors in interest, shall upon Landlord's request, execute and deliver upon the demand of Landlord any and all instruments desired by Landlord, subordinating, in the manner reasonably requested by Landlord, this Lease to any such mortgage or deed of trust and Tenant's failure to do so upon demand shall constitute a default under this Lease. Landlord shall upon Tenant's request execute a Nondisturbance Agreement in a form reasonably acceptable to the holder of any mortgage or deed of trust on the Property.

Should any mortgage or deed of trust affecting the Building, the Property or both, be foreclosed, then; (1) the liability of the mortgagee, beneficiary or purchaser at such foreclosure sale shall exist only so long as such mortgagee beneficiary, or purchaser is the owner of the Building and/or Property and such liability shall not continue or survive after further transfer of ownership; and (2) Tenant shall be deemed to have attorned, as Tenant under this Lease, to the purchaser at any foreclosure sale thereunder, and this Lease shall continue in force and effect as a direct lease between and binding upon Tenant and such purchaser at any foreclosure sale. As used in this Article 23, "mortgagee" and "beneficiary" shall include successors and assigns of any such party, whether immediate or remote, the purchaser of any mortgage or deed of trust, whether at foreclosure or otherwise, and the successors, assigns and mortgagees and beneficiaries of such purchaser, whether immediate or remote.

Section 23.2. **Tenant's Notices** . In the event of any act or omission by Landlord under this Lease which would give Tenant the right to terminate this Lease or to claim a partial or total eviction, if any, Tenant will not exercise any such right until:

(A) it has given written notice (by United States certified or registered mail, postage prepaid) of such act or omission to the holder of any mortgage or deed of trust on the Property (whose names and addresses Landlord agrees will be furnished to Tenant on request); and

(B) any such holder of any mortgage or deed of trust on the Property shall, following the giving of such notice, have failed with reasonable diligence to commence and to pursue reasonable action to remedy such act or omission.

ARTICLE 24.
ESTOPPEL CERTIFICATE

Tenant shall, at any time and from time to time, upon not less than seven (7) calendar days following receipt of prior written notice from Landlord, execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and such other matters concerning this Lease and the Tenant as may be reasonably requested by Landlord, its lenders, or any potential assignee of Landlord including the dates to which the Rent and other charges are paid, and acknowledging that Tenant is paying Rent on a current basis with no offsets or claims, and there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder (or specifying such offsets, claims, or defaults, if any are claimed). It is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Building Complex or by any other person to whom it is delivered. Tenant's failure to deliver such statement, after having received a second notice from Landlord providing Tenant with three (3) additional calendar days to provide such statement, shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord's performance, and that not more than two (2) months, rental has been paid in advance.

ARTICLE 25.
WAIVER

The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The acceptance of Rent or any other sums due by Tenant hereunder shall not be construed to be a waiver of any breach by Tenant of any term, covenant, or condition of this Lease, it being understood and agreed that the remedies herein given to Landlord shall be cumulative, and

the exercise of any one remedy by Landlord shall not be to the exclusion of any other remedy.

ARTICLE 26.
INABILITY TO PERFORM

The Lease and the obligation of Tenant to pay Rent and any other sums due by Tenant hereunder and to perform all of the other covenants and agreements hereunder on the part of Tenant to be performed shall not be affected, impaired, or excused, nor shall Landlord at any time be deemed to be in default hereunder because Landlord: (1) is unable to fulfill any of its obligations under this Lease; or (2) is unable to supply or is delayed in supplying any service expressly or by implication to be supplied; or (3) is unable to make or is delayed in making any improvements, repairs, additions, alterations, or decorations; or (4) is unable to supply or is delayed in supplying any equipment or fixtures, if Landlord is prevented or delayed from so doing any of the foregoing by reason of accident, breakage, repairs, strike or labor troubles, or any outside cause whatsoever beyond the reasonable control of Landlord, including, but not limited to, riots and civil disturbances, energy shortages, or governmental preemption in connection with a national emergency, or by reason of any rule, order, or regulation of any department or subdivision thereof of any government agency, or by reason of the conditions of supply and demand which have been or are affected by war or other emergency, or by reason of any other cause, similar or dissimilar, beyond the reasonable control of Landlord.

ARTICLE 27.
SUBROGATION

The parties hereto agree that any and all fire and extended coverage insurance which is required to be carried by either shall be endorsed with a subrogation clause, substantially as follows: “This insurance shall not be invalidated should the insured waive, in writing, prior to a loss, any and all right of recovery against any party for loss occurring to the property described herein”; and each party hereto waives all claims for recovery from the other party, its officers, agents or employees for any loss or damage (whether or not such loss or damage is caused by negligence of the other party, and notwithstanding any provisions contained in this Lease to the contrary) to any of its real or personal property insured under valid and collectible insurance policies to the extent of the collectible recovery under such insurance.

ARTICLE 28.
APPENDICES

Appendices, exhibits, clauses, plats, plans, riders, or other attachments, if any, referred to herein and signed or initialed by Landlord and Tenant and affixed to this Lease are hereby incorporated herein and made a part hereof. Tenant shall, at the time of executing this Lease, complete the forms attached hereto as Appendices F, G and H.

ARTICLE 29.
SALE BY LANDLORD

In the event of a sale or conveyance or transfer by Landlord of its interest in the Property and/or in the Building containing the Leased Premises, and/or in this Lease, the same shall operate to release Landlord (subject to Section 33.2 hereof) from any future liability contained in favor of Tenant, and in such event, Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. This Lease shall not be affected by any such sale, conveyance, or transfer, and Tenant agrees to attorn to such purchaser or transferee.

ARTICLE 30.
RIGHT OF LANDLORD TO PERFORM

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant’s sole cost and expense, and without any abatement of Rent or any other sums due by Tenant hereunder. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for nine (9) calendar days after written notice thereof by Landlord, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant’s part to be made or performed as in this Lease provided. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the rate of eighteen percent (18%) from the date of such payment by Landlord until the date on which Tenant fully reimburses Landlord, shall be payable to Landlord on demand, and Tenant covenants to pay any such sums, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant, as in the case of default by Tenant in the payment of Rent.

ARTICLE 31.
ATTORNEYS' FEES

In the event of any legal proceeding between Tenant and Landlord to enforce any provision of this Lease or any right of either party hereto, the unsuccessful party to such legal proceeding shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred therein. If Landlord or Tenant without fault, are made a party to any litigation instituted by or against the other, then such party shall indemnify the other against, and protect, defend, and save it harmless from, all costs and expenses, including attorneys' fees, incurred in connection therewith. To the extent permitted by law, Landlord and Tenant hereby waive the right to a jury trial in any legal action or proceeding relating to this Lease.

ARTICLE 32.
NOTICE

Any notice from Landlord to Tenant or from Tenant to Landlord shall be in writing and may be served personally or by mail. If served by mail, it shall be mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to Tenant at the Leased Premises or to Landlord at DPC Development Company, 7000 E. Belleview Ave., #300, Greenwood Village, CO 80111, to the attention of the Director of Property Management. Either party may change these persons or addresses by giving notice as provided above.

ARTICLE 33.
SECURITY DEPOSIT

Section 33.1. **Amount and Use**. Tenant has, upon Lease execution, deposited with Landlord the sum of Six Thousand Three Hundred Fifty-Eight and 00/100 ($6,358.00) (the "Security Deposit") as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of Rent, Landlord may use, apply, or retain all or any part of this Security Deposit for the payment of any Rent and any other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of such Security Deposit is to be used or applied, Tenant shall, within ten (10) calendar days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within a reasonable period of time after the expiration of this Lease Term and upon Tenant's vacation of the Leased Premises, provided, however, the Security Deposit may be retained by Landlord as security for Tenant's obligations under Article 7 until after the final determination of the Operating Costs for the calendar year in which the Lease expired. Any amounts due from Tenant under said Article 7 may be deducted from the Security Deposit prior to the return of the balance thereof.

Section 33.2. **Transfer of Deposit**. Tenant acknowledges that Landlord has the right to transfer its interest in the Building Complex, the Property and this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall have the right to transfer such Security Deposit to the transferee. Upon Landlord's delivery to Tenant of such transferee's written acknowledgment of its receipt of such Security Deposit Landlord shall thereby be released by Tenant from all liability or obligation for the return of such deposit, and Tenant agrees to look solely to such transferee for the return of the Security Deposit.

ARTICLE 34.
RIGHTS RESERVED

Landlord reserves the following rights, exercisable without notice and without liability to Tenant for damage or injury to property, person, or business, and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession, or giving rise to any claim for set-off or abatement of rent:

A. To change the Building's name or street address;

B. To install, affix, and maintain any and all signs on the exterior and interior of the Building or the Property;

C. To designate and approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators, and other similar equipment, and to control all internal lighting that may be visible from the exterior of the Building;

D. To retain at all times, and to use in appropriate instances, keys to all doors within and into the Leased Premises. No locks or bolts shall be altered, changed, or added without the prior written consent of Landlord;

E. To decorate or to make repairs, alterations, additions, or improvements, whether structural or otherwise, in and about the Building, or any part thereof, and for such purposes to enter upon the Leased Premises, and during the continuance of said work to temporarily close doors, entryways, public spaces, and corridors in the Building, and to interrupt or temporarily suspend Building services and facilities, Landlord to use reasonable efforts to minimize any interruption or interference with Tenant's use or occupancy of the Leased Premises when performing such work;

F. To have and retain a paramount title to the Leased Premises, free and clear of any act of Tenant;

G. To grant to anyone the exclusive right to conduct any business or to render any services in the Building; and

H. To approve the weight, size, and location of safes and other heavy equipment and articles in and about the Leased Premises and the Building, and to require all such items and furniture to be moved into and out of the Building and the Leased Premises only at such times and in such manner as Landlord shall direct in writing. Movement of Tenant's property into or out of the Building, and within the Building, is entirely at the risk and responsibility of Tenant, and Landlord reserves the right to require permits before allowing any such property to be moved into or out of the Building.

ARTICLE 35.
SUBSTITUTION OF SPACE

Landlord reserves the right, upon sixty (60) calendar days' written notice to Tenant, and at any time, without any adjustment in Rent, to substitute for the space described on Appendix A other substantially similar space in a substantially comparable location on the same floor or any other floor of the Building, which substitute space shall be approximately equal in area and dimensions to the space described on Appendix A. If Landlord shall exercise said option, the substituted space shall thereafter be deemed, for the purposes hereof, the "Leased Premises" and a new amended Appendix A to this Lease showing the new space will be substituted for the original Appendix A. Landlord agrees to pay the Tenant's expenses to move its furniture, fixtures and equipment to such substituted space, and shall pay other reasonable expenses of Tenant incurred as a direct result of such substitution of space, including but not limited to costs of new stationary and advertising.

ARTICLE 36.
REAL ESTATE BROKER

Tenant represents that Tenant has dealt directly and only with Cushman & Wakefield, as Landlord's broker, in connection with this Lease, and that insofar as Tenant knows, no other broker negotiated or participated in the negotiations of this Lease, or submitted or showed the Leased Premises, or is entitled to any commission in connection herewith. Tenant agrees to indemnify and defend Landlord from any claims or demands of any other brokers.

ARTICLE 37.
INDUCEMENT RECAPTURE IN THE EVENT OF DEFAULT

Any agreement by Landlord for free or abated rent or other charges applicable to the Leased Premises, or for the giving or paying by Landlord to or for Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, including, but not limited to, any tenant finish allowance, free parking or commissions, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of the Lease to be performed or observed by Tenant during the term hereof as the same may be extended. Upon the occurrence of an event of default of the Lease by Tenant, any such Inducement Provision shall automatically be deemed deleted from the Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Landlord under such an Inducement Provision shall be immediately due and payable by Tenant to Landlord, and recoverable by Landlord, as additional rent due under the Lease, notwithstanding any subsequent cure of said event of default by Tenant. The acceptance by Landlord of rent or the cure of the event of default which initiated the operation of this Article 37 shall not be deemed a waiver by Landlord of the provisions of this Article 37 unless specifically so stated in writing by Landlord at the time of such acceptance.

ARTICLE 38.
REMOVAL OF CABLING

Tenant shall be solely responsible for the cost of installation and maintenance of any high speed cable or fiber optic that Tenant requires in the Leased Premises. Landlord shall provide reasonable access to the Building's electrical lines, feeders, risers, wiring and other machinery to enable Tenant to install high speed cable or fiber optic to serve its intended purpose, if any. All such cabling installed shall be tagged by Tenant at their point of entry into the Building, at the terminal end of the cable and in the riser closet indicating the type of cable, the Tenant's name and the service provided. Tenant shall be responsible for the removal of such cabling and fiber optic at the termination or expiration of the Term or the early termination of the Tenant's right to occupy the Leased Premises. Failure to remove any abandoned or unused cabling at the expiration or termination of the Lease or the early termination of Tenant's right to occupy the Leased Premises will be deemed to be a holdover under Article 8 of the Lease. In the event Tenant fails to remove such cabling as set forth herein, Landlord may, but shall not be obligated to, remove such cabling, all at Tenant's sole cost and expense.

ARTICLE 39.
PATRIOT ACT CERTIFICATION

Tenant certifies that neither Tenant, nor any of its constituent partners, managers, members or shareholders, nor any beneficial owner of Tenant or any such partner, manager, member or shareholder, nor any other representative or affiliate of Tenant is a "Prohibited Person," defined as (a) a person, entity or nation named as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person pursuant to any law, order, rule or regulation that is enforced or administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), including, but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act"); (b) a person, entity or nation owned or controlled by, or acting on behalf of, any person, entity or nation named as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person pursuant to any law, order, rule or regulation that is enforced or administered by OFAC, including, but not limited to, the Executive Order and the Patriot Act; (c) a person, entity or nation engaged directly or indirectly in any activity prohibited by any law, order, rule or regulation that is enforced or administered by OFAC, including, but not limited to, the Executive Order and the Patriot Act; (d) a person, entity or nation with whom the Landlord is prohibited from dealing or otherwise engaging in any transaction pursuant to any terrorism or money laundering law, including, but not limited to, the Executive Order and the Patriot Act; (e) a person, entity or nation that has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering; or (f) a person, entity or nation who is affiliated with any person, entity or nation who is described above in subsections (a) through (e) above. Tenant agrees to indemnify and save Landlord, Landlord's representatives and Landlord's managing agent and mortgagee harmless against and from any and all claims, damages, losses, risks, liabilities and expenses, including attorneys' fees and costs, arising from or related to any breach of the foregoing certification.

ARTICLE 40.
MISCELLANEOUS PROVISIONS

A. The term "office" or "offices", whenever used in this Lease, shall not be construed to mean or to permit the Leased Premises to be used as a store or stores, for the sale or display, at any time, of goods, wares, or merchandise of any kind, or as a restaurant, shop, booth, stand, barbershop, or for other similar purposes, or for manufacturing. The words "re-enter" or "re-entry", as used in this Lease, are not restricted to their technical legal meaning. The term "Landlord", as used in this Lease, means only the landlord from time to time, and upon conveying or transferring its interest, Landlord shall be relieved from any further obligation or liability hereunder.

B. Time is of the essence of this Lease and of each and all of its provisions.

C. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution by both Landlord and Tenant.

D. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions.

E. This Lease shall be governed by and construed pursuant to the laws of the State of Colorado.

F. Should any mortgagee or beneficiary under a deed of trust require a modification of this Lease, which modification will not bring about any increased cost or expense to Tenant or will not in any other way substantially change the rights and obligations of Tenant hereunder, then and in such event, Tenant agrees that

this Lease may be so modified.

G. All rights and remedies of Landlord under this Lease, or those which may be provided by law, may be exercised by Landlord in its own name individually, or in its name by its agent, and all legal proceedings for the enforcement of any such rights or remedies, including distress for rent, unlawful detainer, and any other legal or equitable proceedings, may be commenced and prosecuted to final judgment and be executed by Landlord in its own name individually or in its name by its agent. Landlord and Tenant each represent to the other that each has full power and authority to execute this Lease and to make and perform the agreements herein contained, and Tenant expressly stipulates that any rights or remedies available to Landlord, either by the provisions of this Lease or otherwise, may be enforced by Landlord in its own name individually or in its name by its agent or principal. If Tenant is a corporation or other legal entity, each individual executing this Lease on behalf of said entity represents and warrants that (i) he/she is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with its bylaws or operating agreements; (ii) this Lease is binding upon said corporation or entity; and (iii) a resolution to that effect in a form reasonably acceptable to Landlord shall be provided immediately upon request.

H. The marginal headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

I. Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions, expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease except as expressly set out in this Lease and the attachments hereto, and that the terms and provisions of this Lease may not be modified or amended except by written instrument signed by both Landlord and Tenant.

J. Tenant agrees that Tenant, Tenant's employees and agents or any others permitted by Tenant to occupy or enter the Leased Premises shall abide by the reasonable rules and regulations contained in Appendix C. Landlord shall have the right to amend, delete, modify or change the rules and regulations provided that said amendments are reasonable and applicable to and uniformly bind each tenant of the Building Complex. Tenant agrees to comply with all such rules and regulations upon written notice from Landlord thereof accompanied by a copy of such rules and regulations. A breach of any of such rules or regulations, beyond any applicable notice and default periods, shall be deemed a default under the Lease and Landlord shall have all remedies as set forth in Article 20. Landlord shall not, however, be liable to Tenant for the violation of any such rules and regulations by any other Tenant, its employees, agents, visitors, licensees or any other person. If there is any inconsistency or conflict between the rules and regulations and this Lease, the terms of this Lease shall control.

K. Landlord and all partners, shareholders, or members, as the case may be, shall have absolutely no personal liability with respect to any provision of this Lease, or any obligation or liability arising in connection therewith. Tenant shall look solely to the equity in the Building Complex in which the Leased Premises is located, for the satisfaction of any remedies of Tenant in the event of a breach by the Landlord of any of its obligations. Such exculpation of liability shall be absolute without any exception whatsoever.

L. Subject to the terms and provisions of Article 29, the covenants and conditions herein contained shall apply to and bind the respective heirs, successors, executors, administrators, and assigns of the parties hereto, and the terms “Landlord” and “Tenant” shall include the successors and assigns of either such party, whether immediate or remote.

M. Landlord covenants and agrees that Tenant, upon complying with all of the obligations of Tenant hereunder, and subject to the terms and provisions hereof, shall peaceably and quietly enjoy the Leased Premises and Tenant’s rights hereunder during the Term hereof, without hindrance by Landlord or any persons claiming under Landlord.

N. Tenant shall not record this Lease, nor a short form memorandum thereof.

O. Wherever in this Lease the consent of one party is required for an act of the other party, unless otherwise specified, such consent shall not be unreasonably withheld, conditioned or delayed.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:
SYRACUSE HILL II LLC,
a Colorado limited liability company

By_____
Christopher R. King, Manager

TENANT:
HEATWURX, INC.,
a Delaware corporation

By_____
Its: Stephen Garland, President and CEO

[TENANT'S NOTARY BLOCK]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

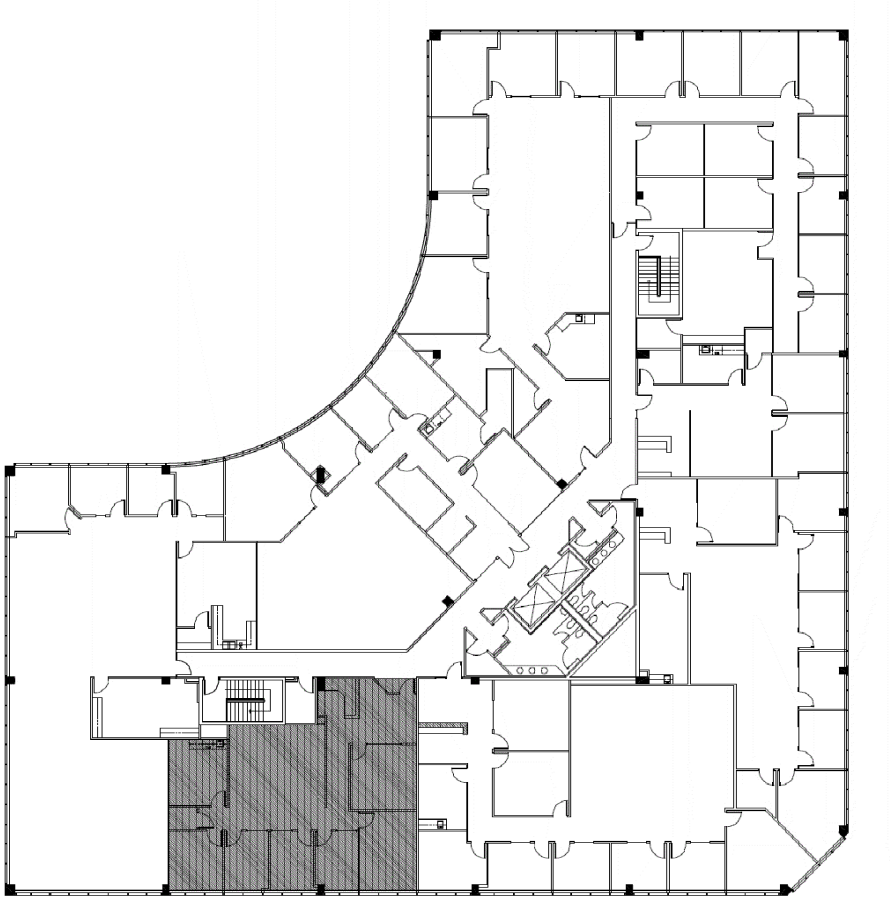
The foregoing instrument was acknowledged before me this ____ day of _____, 20___ by_____ of _____.

Witness my hand and official seal.
My commission expires:

_____
Notary Public

APPENDIX A
Leased Premises

Note: Outline and location of Leased Premises identified by shaded area. Plan not to scale. Any furniture shown is for planning purposes only and is not being provided to Tenant under the Lease; measurements to be confirmed by Landlord's architect.



INITIALS:

LANDLORD:

TENANT:

APPENDIX B
Legal Description of the Property

The Southeast quarter of Tract 23, Subdivision of Section 21, Township 5 South, Range 67 West of the Sixth Principal Meridian, except that portion described in Deed recorded April 20, 1982 in Book 3612 at Page 122, County of Arapahoe, State of Colorado, being more particularly described as follows:

Commencing at the West 1/4 corner of said Section 21; Thence N89°51'17"E along the south line of the Northwest 1/4 of said Section 21, a distance of 1,300.04 feet; thence N00°07'05"E along the East line extended Southerly of said Tract 23, a distance of 658.35 feet to the Southeast corner of said Tract 23; Thence S89°50'33"W along the South line of said Tract 23, a distance of 15.00 feet to the point of beginning; Thence continuing S89°50'33"W along the South line of said Tract 23 a distance of 302.36 feet to the Southeast corner of Tract II, Syracuse Hill, as recorded in Plat Book 51 at Page 71, Arapahoe County records; Thence N00°07'50"E along the East line of said Tract II; Thence N89°50'12"E along the South line of Tract II, said Syracuse Hill, a distance of 302.29 feet to a point on the West right-of-way line of South Syracuse Way; thence S00°07'05"W along said West right-of-way line and being 15.00 feet West and parallel to the East line of said Tract 23, a distance of 321.67feet to the point of beginning.

Parcel contains 97,246 square feet, 2.325 acres, more or less

INITIALS:

LANDLORD:

TENANT:

APPENDIX C

Rules and Regulations

1. Tenant shall not place anything, or allow anything to be placed, in the Tenant's Terrace Space, if any, or near the glass of any window, door, partition or wall which may, in Landlord's judgment, appear unsightly from outside of the Building.

2. The Building directory, located in the Building lobby as provided by Landlord, shall be available to Tenant to display one (1) line/name and their location in the Building, which display shall be as directed by Landlord.

3. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant or used by Tenant for any purposes other than for ingress to and egress from the Leased Premises. The halls, passages, exits, entrances, elevators, stairways, balconies and roof are not for the use of the general public and Landlord shall, in all cases, retain the right to control and prevent access thereto by all persons whose presence in the judgment of Landlord, reasonably exercised, shall be prejudicial to the safety, character, reputation and interests of the Building. Neither Tenant nor any employees or invitees of any tenant shall go upon the roof of the Building.

4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purposes other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and to the extent caused by Tenant or its employees or invitees, the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant.

5. Tenant shall not cause any unnecessary janitorial labor of services by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness.

6. No cooking (except by microwave oven, crock pots or other devices authorized by Landlord) shall be done or permitted by Tenant on the Leased Premises, nor shall the Leased Premises be used for lodging.

7. Tenant shall not bring upon, use or keep in the Leased Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.

8. Landlord shall have sole power to direct electricians to where and how telephone and other wires are to be introduced. No boring or cutting for wires is to be allowed without the written consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Leased Premises shall be subject to the written approval of Landlord.

9. Upon the termination of the tenancy, Tenant shall deliver to Landlord all keys and passes for offices, rooms, parking lot and toilet rooms which shall have been furnished Tenant. In the event of the loss of any keys so furnished, Tenant shall pay Landlord therefor. Tenant shall not make, or cause to be made, any such keys and shall order all such keys solely from Landlord and shall pay Landlord for any additional such keys over and above the two sets of keys furnished by Landlord.

10. Tenant shall not install linoleum, tile, carpet or other floor covering so that the same shall be affixed to the floor of the Leased Premises in any manner except as approved in writing by Landlord.

11. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the freight elevator, except between such hours and in such freight elevator as shall be designated by Landlord.

12. Tenant shall cause all doors to the Leased Premises to be closed and securely locked before leaving the Building at the end of the day.

13. Without the prior written consent of Landlord, Tenant shall not use the name of the Building or any picture of the Building in connection with, or in promoting or advertising the business of Tenant, except Tenant may use the address of the Building as the address of its business.

14. Tenant shall cooperate fully with Landlord to assure the most effective operation of the heating and air conditioning of the Leased Premises and the Building, and shall refrain from attempting to adjust any controls. Tenant shall keep corridor doors closed.

15. Except for Landlord's gross negligence, Tenant assumes full responsibility for protecting the Leased Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to

the Leased Premises closed and secured.

16. Except with the prior written consent of the Landlord, Tenant shall not sell or cause to be sold any items or services at retail in or from the Leased Premises, nor shall Tenant carry on or permit or allow any employee or person to carry on the business of machine copying, stenography, typewriting or similar business in or from the Leased Premises for the service or accommodation of occupants of any portion of the Building without written consent of the Landlord.

17. Tenant shall not conduct any auction nor permit any fire or bankruptcy sale to be held on the Leased Premises, nor store goods, wares or merchandise on the Leased Premises. Tenant shall not allow any vending machines on the Leased Premises without Landlord's prior written consent.

18. All freight must be moved into, within and out of the Building under the supervision of Landlord and according to such regulations as may be posted in the Building Manager's office. All moving of furniture or equipment into or out of the Building by Tenant shall be done at such time and in such manner as directed by Landlord or its agent. In no cases shall items of freight, furniture, fixtures or equipment be moved into or out of the Building or in any elevator during such hours as are normally considered rush hours to an office building; i.e., 7:30 a.m. to 9:30 a.m., 11:00 a.m. to 1:00 p.m., and 4:00 p.m. to 6:30 p.m.

19. On Sundays, holidays (legal) and on other days during certain hours for which the Building may be closed after normal business hours, access to the Building or to halls, corridors, elevators, stairwells may be controlled by Landlord in its sole discretion through the use of the Building watchman. This watchman will have the right to demand of any and all persons seeking access to the Building prior identification to determine if they have rights of access to the Leased Premises. The Landlord shall, in no case, be liable for damages wherein admission to the Building has not been granted during abnormal hours, by reason of a tenant failing to properly identify himself to the watchman, or through the failure of the Building to be unlocked and open for access by Tenant, Tenant's employees and general public.

20. Tenant shall not change locks or install other locks on doors without the prior written consent of Landlord.

21. Tenant shall give prompt written notice to Landlord of any accidents to or defects in plumbing, electrical fixtures or heating apparatus so the same may be attended to properly.

22. No person or persons other than those approved by Landlord will be permitted to enter the Building for purposes of cleaning, maintenance, construction or painting.

23. Tenant shall not permit or suffer the Leased Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors, or vibrations or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be kept in or about the Building. Smoking or carrying of a lighted cigar, pipe or cigarette in any common areas in the interior of the Building is prohibited.

24. Canvassing, soliciting and peddling in the Building are prohibited. Tenants shall cooperate to prevent the same.

25. Landlord reserves the right, at any time, to rescind any one or more of these rules and regulations, or to make such other and further reasonable rules and regulations as in Landlord's judgment may from time to time be necessary for the safety, care and cleanliness of the Building for the preservation of order therein.

INITIALS:

LANDLORD:

TENANT:

APPENDIX D
Commencement Date Memorandum

THIS COMMENCEMENT DATE MEMORANDUM shall set forth and reaffirm certain terms and provisions contained in that certain lease dated July 18th 2012 ("Lease") by and between Syracuse Hill II LLC, a Colorado limited liability company, as "Landlord" and Heatwurx, Inc., a Delaware Corporation as "Tenant" regarding the lease by Tenant of a portion of the property situated at 6041 S. Syracuse Way, Greenwood Village, Arapahoe County, Colorado.

W I T N E S S E T H :

NOW, THEREFORE, Landlord and Tenant acknowledge and agree as follows:

The leased premises consist of 2,244 rentable square feet and are located in unit/space 315;

The leased premises have been delivered to and accepted by Tenant;

The Lease Commencement Date is July 23rd , 2012 and the Termination Date is August 31, 2013.

The minimum Monthly Rental is as per the schedule shown below:

Time Period	Monthly Rental
7/23/12 – 8/22/12	$0
8/23/12 – 8/31/13	$3,179.00

The Lease is in full force and effect, and there are no claims, offsets or defenses thereto.

IN WITNESS WHEREOF, the parties have caused this Commencement Date Memorandum to be duly executed and made this _____ day of _____, 20___.

LANDLORD: **TENANT:**

By_____ By /s/ Stephen Garland
Its_____ Its: Stephen Garland, President and CEO

[TENANT'S NOTARY BLOCK]

STATE OF COLORADO)
AND) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____ of _____.

Witness my hand and official seal.
My commission expires:

[SEAL]

_____
Notary Public

INITIALS:

LANDLORD:

TENANT:

APPENDIX E
INTENTIONALLY OMITTED

APPENDIX F
Notice of After-Hours Procedures
FOR DENVER METRO PROPERTIES

THIS NOTICE OF AFTER-HOURS EMERGENCY PROCEDURES shall serve as guidance to Tenant as to the types of calls that are deemed emergencies, as well as the proper phone number to use for such emergency calls.

For **any** emergency, call our main number 303-796-8288. **During regular business hours** dial 0 to reach the receptionist and provide the necessary information so that the call can be dispatched to the appropriate building engineer. **After business hours** the recorded message will instruct callers to dial the on-call engineer's mailbox at extension 3337. Leave a brief message stating the problem, the property address, your name and a call-back number. Upon completion of the call, the on-call engineer will be paged and will respond to the call appropriately.

Emergencies are considered situations in which life or property is threatened. Examples of true emergencies requiring the building engineer to respond immediately include: elevator entrapment; fire; flood; broken water pipe; power outage; building damaged by foreign object such as fallen power lines, fallen tree, car crash, or break-in.

Non-emergency calls should not go through the on-call process. Routine maintenance calls should be placed prior to 3:00 p.m. on regular business days with the building engineer assigned to your property. Examples of routine/non-emergency situations include: locked out of suite, dropped keys down toilet or elevator shaft, access to phone closet, hot/cold comfort, light bulbs, janitorial.

Frequently, we get requests from tenant employees for access into the suite or building because they forgot their keys, lost their keys, locked their keys in the suite, forgot the building access code, etc. Since we do not know who is authorized to enter your suite at any given time, it is our policy to not let anyone into a locked suite or provide a building access code over the telephone. Anyone who is "locked-out" must call a co-worker to let them in.

Acknowledgement:

I hereby acknowledge that Tenant is responsible to establish its own procedures for placing maintenance calls to the building engineers and to properly distinguish between emergency and non-emergency calls, and that DPC Development Company employees and/or agents are not responsible to respond to non-emergency calls until the next business day, nor are they responsible to provide access into the Leased Premises for employees that are locked out. I also acknowledge that DPC Development Company may process, at its discretion, a $25.00 fee for any and all after-hour requests that are not deemed to be an emergency as defined above.

_____ _____
Signed Date

__Stephen Garland_____ _Heatwurx, Inc. Suite 315_
Name (Printed or Typed) Tenant Name, Suite Number

__Syracuse Hill II_____
Building Name

APPENDIX G
Notice of Contact Information

THE PROPERTY MANAGER ASSIGNED TO THIS PROPERTY IS:

_____
Telephone: _____
Fax: _____
Email: _____

TENANTS: PLEASE PROVIDE THE FOLLOWING INFORMATION AT THE TIME THE LEASES ARE SIGNED

THE LOCAL CONTACT FOR LEASE ADMINISTRATION IS:

Name: __Brad Underwood_____
Telephone: __303-532-1641 x56_____
Fax: __303-532-1642_____
Email: ___brad@heatwurx.com_____

THE ACCOUNTS PAYABLE CONTACT IS:

Name: ___Brad Underwood_____
Telephone: __303-532-1641 x56_____
Fax: __303-532-1642_____
Email: ___brad@heatwurx.com_____

THE BILLING ADDRESS IS:

__Heatwurx, Inc._____
__PO Box 3367_____
__Greenwood Village, CO 80155_____
_____

Directory listing / suite sign identification: __Heatwurx, Inc. _____

APPENDIX H
Syracuse Hill II
Policies and Procedures for Tenant Moves

TENANT / SUITE:__Heatwurx, Inc./ 315____ DATE OF MOVE: _____7/23/12_____
TENANT CONTACT: ___Steve Garland____ MOVING COMPANY:
_____
SIGNATURE / DATE: _____ SIGNATURE / DATE:
_____

TENANT INITIAL	MOVER'S INITIAL	
_____	_____	1. A certificate of insurance shall be provided one week prior to the move: SYRACUSE HILL II, LLC c/o DPC Development Company 7000 E. Belleview Ave, Ste 300 Greenwood Village, CO 80111 303-796-8388 fax, attn: Mandy Howell
_____	_____	2. All moves are to take place during regular business hours. The building engineer must be notified the day of the move and all preparations listed below must be seen and approved by the engineer prior to any actual movement of furniture. Call Mitch Gorsevski at 720-353-6213 to make arrangements.
_____	_____	3. The elevator must be protected with pads to transport any cargo to or from upper floors. Call Mitch Gorsevski to arrange for pads and the elevator key.
_____	_____	4. The carpet shall be protected with masonite boards (or similar product) from the building entrance to the elevator on the first floor, and from the elevator to the suite on upper floors (or directly from the entrance to the suite on the first floor) to prevent stains or other damage.
_____	_____	5. The suite doors and drywall corners shall be protected to prevent scratches or other damage.
_____	_____	6. Any damage to the building attributable to movement of tenant property shall be repaired by the landlord at the tenant's expense, including but not limited to: carpet shampoo, drywall repair and paint, door repair or replacement.
_____	_____	7. All boxes must be broken down to lay flat for disposal. Boxes may be discarded in the dumpster or left in the suite for janitors to remove. Any trash or boxes not placed in trash cans must be labeled TRASH in order for the janitors to remove. In no event shall Tenant place any trash in the corridors.
_____	_____	8. Any ceiling tiles soiled or damaged by telephone cable installers will be replaced at Tenant's expense.

Heatwurx, Inc. Code of Ethics and Business Conduct

1. Introduction.

1.1 The Board of Directors of Heatwurx, Inc. (together with its subsidiaries, the "**Company**") has adopted this Code of Ethics and Business Conduct (the "**Code**") in order to:

(a) promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest;

(b) promote full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with, or submits to, the Securities and Exchange Commission (the "**SEC**") and in other public communications made by the Company;

(c) promote compliance with applicable governmental laws, rules and regulations;

(d) promote the protection of Company assets, including corporate opportunities and confidential information;

(e) promote fair dealing practices;

(f) deter wrongdoing; and

(g) ensure accountability for adherence to the Code.

1.2 All directors, officers and employees are required to be familiar with the Code, comply with its provisions and report any suspected violations as described below in Section 10, Reporting and Enforcement.

2. Honest and Ethical Conduct.

2.1 The Company's policy is to promote high standards of integrity by conducting its affairs honestly and ethically.

2.2 Each director, officer and employee must act with integrity and observe the highest ethical standards of business conduct in his or her dealings with the Company's customers, suppliers, partners, service providers, competitors, employees and anyone else with whom he or she has contact in the course of performing his or her job.

3. Conflicts of Interest.

3.1 A conflict of interest occurs when an individual's private interest (or the interest of a member of his or her family) interferes, or even appears to interfere, with the interests of the Company as a whole. A conflict of interest can arise when an employee, officer or director (or a member of his or her family) takes actions or has interests that may make it difficult to perform his or her work for the Company objectively and effectively. Conflicts of interest also arise when an employee, officer or director (or a member of his or her family) receives improper personal benefits as a result of his or her position in the Company.

3.2 Loans by the Company to, or guarantees by the Company of obligations of, employees or their family members are of special concern and could constitute improper personal benefits to the recipients of such loans or guarantees, depending on the facts and circumstances. Loans by the Company to, or guarantees by the Company of obligations of, any director or executive officer or their family members are expressly prohibited.

3.3 Whether or not a conflict of interest exists or will exist can be unclear. Conflicts of interest should be avoided unless specifically authorized as described in Subsection 3.4.

3.4 Persons other than directors and executive officers who have questions about a potential conflict of interest or who become aware of an actual or potential conflict should discuss the matter with, and seek a determination and prior authorization or approval from, their supervisor or the Chief Financial Officer. A supervisor may not authorize or approve conflict of interest matters or make determinations as to whether a problematic conflict of interest exists without first providing the Chief Financial Officer with a written description of the activity and seeking the Chief Financial Officer's written approval. If the supervisor is himself involved in the potential or actual conflict, the matter should instead be discussed directly with the Chief Financial Officer.

Directors and executive officers must seek determinations and prior authorizations or approvals of potential conflicts of interest exclusively from the Audit Committee.

4. Compliance.

4.1 Employees, officers and directors should comply, both in letter and spirit, with all applicable laws, rules and regulations in the cities, states and countries in which the Company operates.

4.2 Although not all employees, officers and directors are expected to know the details of all applicable laws, rules and regulations, it is important to know enough to determine when to seek advice from appropriate personnel. Questions about compliance should be addressed to the Chief Financial Officer.

4.3 No director, officer or employee may purchase or sell any Company securities while in possession of material non-public information regarding the Company, nor may any director, officer or employee purchase or sell another company's securities while in possession of material non-public information regarding that company. It is against Company policies and illegal for any director, officer or employee to use material non-public information regarding the Company or any other company to:

(a) obtain profit for himself or herself; or

(b) directly or indirectly "tip" others who might make an investment decision on the basis of that information.

5. Disclosure.

5.1 The Company's periodic reports and other documents filed with the SEC, including all financial statements and other financial information, must comply with applicable federal securities laws and SEC rules.

5.2 Each director, officer and employee who contributes in any way to the preparation or verification of the Company's financial statements and other financial information must ensure that the Company's books, records and accounts are accurately maintained. Each director, officer and employee must cooperate fully with the Company's Accounting and Internal Audit Departments, as well as the Company's independent public accountants and counsel.

5.3 Each director, officer and employee who is involved in the Company's disclosure process must:

(a) be familiar with and comply with the Company's disclosure controls and procedures and its internal control over financial reporting; and

(b) take all necessary steps to ensure that all filings with the SEC and all other public communications about the financial and business condition of the Company provide full, fair, accurate, timely and understandable disclosure.

6. Protection and Proper Use of Company Assets.

6.1 All directors, officers and employees should protect the Company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the Company's profitability and are prohibited.

6.2 All Company assets should be used only for legitimate business purposes[, though incidental personal use is permitted. Any suspected incident of fraud or theft should be reported for investigation immediately.

6.3 The obligation to protect Company assets includes the Company's proprietary information. Proprietary information includes intellectual property such as trade secrets, patents, trademarks, and copyrights, as well as business and marketing plans, engineering and manufacturing ideas, designs, databases, records and any non-public financial data or reports. Unauthorized use or distribution of this information is prohibited and could also be illegal and result in civil or criminal penalties.

7. Corporate Opportunities. All directors, officers and employees owe a duty to the Company to advance its interests when the opportunity arises. Directors, officers and employees are prohibited from taking for themselves personally (or for the benefit of friends or family members) opportunities that are discovered through the use of Company assets, property, information or position. Directors, officers and employees may not use Company assets, property, information or position for personal gain (including gain of friends or family members). In addition, no director, officer or employee may compete with the Company.

8. Confidentiality. Directors, officers and employees should maintain the confidentiality of information entrusted to them by the Company or by its customers, suppliers or partners, except when disclosure is expressly authorized or legally required. Confidential information includes all non-public information (regardless of its source) that might be of use to the Company's competitors or harmful to the Company or its customers, suppliers or partners if disclosed.

9. Fair Dealing. Each director, officer and employee must deal fairly with the Company's customers, suppliers, partners, service providers, competitors, employees and anyone else with whom he or she has contact in the course of performing his or her job. No director, officer or employee may take unfair advantage of anyone through manipulation, concealment, abuse or privileged information, misrepresentation of facts or any other unfair dealing practice.

10. Reporting and Enforcement.

10.1 Reporting and Investigation of Violations.

(a) Actions prohibited by this code involving directors or executive officers must be reported to the Audit Committee.

(b) Actions prohibited by this code involving any other person must be reported to the reporting person's supervisor or the Chief Financial Officer.

(c) After receiving a report of an alleged prohibited action, the Audit Committee, the relevant supervisor, or the Chief Financial Officer must promptly take all appropriate actions necessary to investigate.

(d) All directors, officers and employees are expected to cooperate in any internal investigation of misconduct.

10.2 Enforcement.

(a) The Company must ensure prompt and consistent action against violations of this Code.

(b) If, after investigating a report of an alleged prohibited action by a director or executive officer, the Audit Committee determines that a violation of this Code has occurred, the Audit Committee will report such determination to the Board of Directors.

(c) If, after investigating a report of an alleged prohibited action by any other person, the relevant supervisor or the Chief Financial Officer determines that a violation of this Code has occurred, the supervisor or the Chief Financial Officer will report such

determination to the Company's Chief Executive Officer.

(d) Upon receipt of a determination that there has been a violation of this Code, the Board of Directors or the Chief Executive Officer will take such preventative or disciplinary action as it deems appropriate, including, but not limited to, reassignment, demotion, dismissal and, in the event of criminal conduct or other serious violations of the law, notification of appropriate governmental authorities.

10.3 Waivers.

(a) Each of the Audit Committee (in the case of a violation by a director or executive officer) and the Chief Executive Officer (in the case of a violation by any other person) may, in its discretion, waive any violation of this Code.

(b) Any waiver for a director or an executive officer shall be disclosed as required by SEC and any applicable stock exchange rules.

10.4 Prohibition on Retaliation.

The Company does not tolerate acts of retaliation against any director, officer or employee who makes a good faith report of known or suspected acts of misconduct or other violations of this Code.

ACKNOWLEDGMENT OF RECEIPT AND REVIEW

To be signed and returned to the Chief Financial Officer.

I, _____, acknowledge that I have received and read a copy of the Heatwurx, Inc. Code of Ethics and Business Conduct. I understand the contents of the Code and I agree to comply with the policies and procedures set out in the Code. I understand that I should approach the Chief Financial Officer if I have any questions about the Code generally or any questions about reporting a suspected conflict of interest or other violation of the Code.

_____

[NAME]

_____

[PRINTED NAME]

_____

[DATE]]

CONSENT

We consent to the use in this Registration Statement on Form S-1 of Heatwurx, Inc. of our report dated November 13, 2012, relating to our audits of the financial statements of the predecessor carve-out entity of Heatwurx, Inc. and the financial statements of Heatwurx, Inc., appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to our firm under the captions "Experts" in such Prospectus.

/s/Hein & Associates LLP
Irvine, California
November 13, 2012