

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) January 18, 2007

CAPSTONE TURBINE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-15957
(Commission file number)

95-4180883
(I.R.S. Employer
Identification No.)

21211 Nordhoff Street, Chatsworth, California 91311

(Address of principal executive offices) (Zip Code)

(818) 734-5300

(Registrant's telephone number, including area code)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Precommencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Precommencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Section 1 — Registrant's Business and Operations

Item 1.01 Entry Into a Material Definitive Agreement.

On January 18, 2007, Capstone Turbine Corporation, a Delaware corporation (the "Company"), entered into a Placement Agency Agreement (the "Placement Agency Agreement"), with A.G. Edwards & Sons, Inc. ("A.G. Edwards"), as placement agent, relating to the issuance and sale by the Company of 40,000,000 shares of common stock of the Company, par value \$0.001 per share ("Common Stock"), and warrants to purchase 20,000,000 shares of Common Stock at an initial exercise price of \$1.30 per share ("Warrants") to the signatories to the Subscription Agreements (as defined below) at a price of \$1.14 per unit. The five-year Warrants are immediately exercisable, and will include anti-dilution provisions subject to certain limitations. A copy of the Placement Agency Agreement is attached hereto as Exhibit 1.1 to this report and is incorporated herein by reference. A copy of the form of Warrant is attached hereto as Exhibit 4.1 to this report and is incorporated herein by reference. The description of the Warrants is a summary only and is qualified in its entirety by reference to Exhibit 4.1.

In connection with the offering, the Company entered into subscription agreements, dated January 18, 2007 (the "Subscription Agreements"), between the Company and the investor signatories thereto. The form of Subscription Agreement is attached hereto as Exhibit 10.1 to this report and is incorporated herein by reference.

A.G. Edwards acted as placement agent for the offering and will receive placement fees equal to 4.8% of the gross proceeds of the offering.

First Albany Capital will receive a financial advisory fee equal to 1.2% of the gross proceeds of the offering.

The Company is making the issuance and sale pursuant to a shelf registration statement on Form S-3 (Registration No. 333-128164) declared effective by the Securities and Exchange Commission on September 14, 2005.

Section 2 — Financial Information

Item 2.02 Results of Operations and Financial Condition.

On January 19, 2007, the Company issued a press release regarding its preliminary third quarter fiscal 2007 operating results. A copy of the press release is attached hereto as Exhibit 99.2 to this report and is incorporated by reference herein.

Section 8 — Other Events

Item 8.01 Other Events.

New York Market Developments

We have been in negotiations with CapGen CHP, Inc., an independent dealer and consultant focusing on the New York market ("CapGen"), to convert the existing dealer arrangement to an original equipment manufacturing relationship. The CapGen dealer agreement expired December 31, 2006. Based on discussions to date, management believes that we have an oral understanding with CapGen that will lead to an OEM agreement. There can be no assurance that a definitive agreement will be executed, and failure to enter into such an agreement could have a material adverse effect on our business.

Legal Proceedings

With respect to the purported shareholder class action lawsuit that was filed in December 2001 in the United States District Court for the Southern District of New York (the "District Court") against the Company, two of its then officers, and the underwriters of the Company's initial public offering, which lawsuit has previously been disclosed in the Company's periodic filings, the United States Court of Appeals for the Second Circuit (the "Second Circuit") issued an opinion vacating the District Court's certification of a litigation class in that portion of the case between the Plaintiffs and the underwriter defendants on December 5, 2006. Because the Second Circuit's opinion was directed to the class certified by the District Court for the Plaintiffs' litigation against the underwriter defendants, the opinion's effect on the class certified by the District Court for the company's settlement is unclear. On January 5, 2007, Plaintiffs filed a petition for rehearing en banc by the Second Circuit.

The proposed settlement is pending final approval by the District Court. There can be no assurance that the settlement will be approved and, because of the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of the case if it is not approved.

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Other

On January 19, 2007, the Company issued a press release with respect to the pricing of its offer and sale of Common Stock and Warrants. A copy of the press release is attached hereto as Exhibit 99.1 to this report and is incorporated by reference herein.

Section 9 — Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Exhibits.

Exhibit 1.1	Placement Agency Agreement, dated as of January 18, 2007, between the Company and A.G. Edwards & Sons, Inc.
Exhibit 4.1	Form of Warrant.
Exhibit 5.3	Opinion of Waller Lansden Dortch & Davis, LLP (incorporated by reference into the Company's shelf registration statement on Form S-3 (Registration No. 333-128164)).
Exhibit 10.1	Form of Subscription Agreement.
Exhibit 23.3	Consent of Waller Lansden Dortch & Davis, LLP (included in Exhibit 5.3).
Exhibit 99.1	Press release issued by Capstone Turbine Corporation on January 19, 2007.
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SIGNATURE

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

CAPSTONE TURBINE CORPORATION

(Registrant)

Date: January 18, 2007

By: /s/ Walter J. McBride
Chief Financial Officer

EXHIBIT INDEX

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CAPSTONE TURBINE CORPORATION

40,000,000 Shares

Warrants to Purchase 20,000,000 Shares

Common Stock

(\$0.001 Par Value)

PLACEMENT AGENCY AGREEMENT

January 18, 2007

A.G. Edwards & Sons, Inc.
One North Jefferson Avenue
St. Louis, Missouri 63103

The undersigned, Capstone Turbine Corporation, a Delaware corporation (the "Company"), hereby addresses you (the "Placement Agent") and confirms its agreement with you as follows:

1. Description of Securities. The Company proposes, subject to the terms and conditions stated herein, to issue and sell up to an aggregate of (i) 40,000,000 shares (the "Shares") of the Company's common stock, \$0.001 par value per share (the "Common Stock"), and (ii) 20,000,000 warrants to purchase Common Stock (the "Warrants"), and together with the Shares, the "Securities"), to certain investors (each an "Investor" and, collectively, the "Investors"), in a direct offering under its Registration Statement on Form S-3 (Registration No. 333-128164). The Shares of Common Stock issuable upon exercise of the Warrants are hereinafter referred to as the Warrant Shares. The Company desires to engage the Placement Agent as its placement agent in connection with such issuance and sale. The Securities are more fully described in the Prospectus hereinafter defined.

2. Agreement to Act as Placement Agent; Delivery and Payment. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Placement Agent agrees to act as the Company's exclusive placement agent to assist the Company, on a best efforts basis, in connection with the proposed issuance and sale by the Company of the Securities to the Investors. The Company expressly acknowledges and agrees that this Agreement does not in any way constitute a commitment by the Placement Agent to purchase any of the Securities and does not ensure successful placement of the Securities or any portion thereof. The Company shall pay to the Placement Agent concurrently with the Closing (as defined below) 4.8% of the gross purchase price of the Securities, which gross purchase price does not include any consideration that may be paid to the Company in the future upon exercise of the Warrants (the "Placement Fee").

Upon satisfaction of the conditions set forth in Section 5 hereof, the closing of the sale and issuance of the Securities (the "Closing") shall occur at the offices of Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee, or at such other place as may be agreed upon between the Placement Agent and the Company (the "Place of Closing"), at 10:00 a.m., Eastern Standard Time, on January 24, 2007, or at such other time and date as the Placement Agent and the Company may agree, such time and date of payment and delivery being herein called the "Closing Date."

Concurrently with the execution and delivery of this Agreement, the Company, the Placement Agent and Lowenstein Sandler PC, as escrow agent (the "Escrow Agent"), shall enter into an escrow agreement (the "Escrow Agreement"), pursuant to which an escrow account (the "Escrow Account") will be established for the benefit of the Company and the Investors to settle each purchase of the Securities, with the Shares being settled through the facilities of The Depository Trust Company's DWAC system and the Warrants being issued in registered physical form. Prior to the Closing Date, each such Investor shall deposit into the Escrow Account an amount equal to the product of (x) the number of Securities such Investor has agreed to purchase and (y) the purchase price per share as set forth on the cover page of the Prospectus (the "Purchase Amount"). The aggregate of all such Purchase Amounts is herein referred to as the "Escrow Funds." On the Closing Date, upon satisfaction or waiver of all the conditions to Closing, the Escrow Agent will disburse the Escrow Funds from the Escrow Account to the Company and the Placement Agent as provided in the Escrow Agreement, and the Company shall cause the Securities to be delivered to the Investors, which, with respect to the Shares, shall be made through the facilities of The Depository Trust Company's DWAC system.

The Company acknowledges and agrees that the Placement Agent shall act as an independent contractor, and not as a fiduciary, and any duties of the Placement Agent with respect to investment banking services to the Company, including the offering of the Securities contemplated hereby (including in connection with determining the terms of the offering), shall be contractual in nature, as expressly set forth herein, and shall be owed solely to the Company. Each party disclaims any intention to impose any fiduciary or similar duty on the other. Additionally, the Placement Agent has not advised, nor is advising, the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction with respect to the transactions contemplated hereby. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Placement Agent shall have no responsibility or liability to the Company with respect thereto. Any review by the Placement Agent of the Company, the transactions contemplated hereby or other matters relating to such transactions has been and will be performed solely for the benefit of the Placement Agent and has not been and shall not be on behalf of the Company or any other person. It is understood that the Placement Agent has not and will not be rendering an opinion to the Company as to the fairness of the terms of the offering. Notwithstanding anything in this Agreement to the contrary, the Company acknowledges that the Placement Agent may have financial interests in the success of the offering contemplated hereby that are not limited to the Placement Fee. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Placement Agent with respect to any breach or alleged breach of fiduciary duty.

It is understood that the Company proposes to offer the Securities to the Investors upon the terms and conditions set forth in the Registration Statement (hereinafter defined).

3. Representations, Warranties and Agreements of the Company.

(a) The Company represents and warrants to and agrees with the Placement Agent as of the date hereof and as of the Closing Date and any other date specified below, that:

(i) At the time of filing the Registration Statement on Form S-3 (File No. 333-128164), the Company met the requirements for use of Form S-3 under the 1933 Act for a primary offering. A Registration Statement on Form S-3 (Registration No. 333-128164) with respect to the Securities, including a base prospectus (the "Base Prospectus"), and such amendments to such registration statement as may have been required to the date of this Agreement, has been carefully prepared by the Company pursuant to and in conformity with the requirements of the Securities Act of 1933, as amended (the "1933 Act"), and the rules and regulations thereunder (the "1933 Act Rules and Regulations") of the Securities and Exchange Commission (the "SEC") and has been filed with the SEC under the 1933 Act. Such registration statement has been declared effective by the SEC. Copies of such registration statement, including any amendments thereto, each related preliminary prospectus (meeting the requirements of Rule 430, 430A or 430B of the 1933 Act Rules and Regulations) contained therein, and the exhibits, financial statements and schedules thereto have heretofore been delivered by the Company to the Placement Agent (it being understood among the parties hereto that any reference to "delivery," "furnishing" or similar words or phrases by the Company to the Placement Agent of any information that is on file with the SEC will be deemed to be so delivered in the absence of an express request from the Placement Agent). A final prospectus supplement containing information permitted to be omitted at the time of effectiveness by Rule 430A or 430B of the 1933 Act Rules and Regulations will be filed promptly by the Company with the SEC in accordance with Rule 424(b) of the 1933 Act Rules and Regulations. The term "Registration Statement" as used herein means the registration statement as amended at the time it became effective by the SEC under the 1933 Act (the "Effective Date"), including financial statements, all exhibits and all documents incorporated by reference therein and, if applicable, the information deemed to be included by Rule 430A or 430B of the 1933 Act Rules and Regulations. If an abbreviated registration statement is prepared and filed with the SEC in accordance with Rule 462(b) under the 1933 Act (an "Abbreviated Registration Statement"), the term "Registration Statement" as used in this Agreement includes the Abbreviated Registration Statement. The term "Prospectus" as used herein means, together with the Base Prospectus, the final prospectus supplement as first filed with the SEC in connection with the offering of the Securities pursuant to Rule 424(b) of the 1933 Act Rules and Regulations, including the documents incorporated by reference therein. The term "Preliminary Prospectus" as used herein shall mean a preliminary prospectus in connection with the offering of the Securities as contemplated by Rule 430, 430A or 430B of the 1933 Act Rules and Regulations included at any time in the Registration Statement, including the Base Prospectus and any preliminary prospectus supplement in connection with the offering of the Securities, and including in each case the documents incorporated by reference therein. The term "Free Writing Prospectus" as used herein

shall have the meaning set forth in Rule 405 of the 1933 Act. The term “Issuer Free Writing Prospectus” as used herein shall have the meaning set forth in Rule 433 of the 1933 Act Rules and Regulations. The term “Disclosure Package” as used herein shall mean the Preliminary Prospectus as most recently amended or supplemented prior to the Initial Time of Sale (as defined below) together with the Issuer Free Writing Prospectuses identified in Schedule I hereto, if any, and any other Free Writing Prospectus that the parties hereto shall hereafter expressly agree to treat as part of the Disclosure Package. The Preliminary Prospectus, and, if any, any Issuer Free Writing Prospectus required to be filed pursuant to Rule 433(d) of the 1933 Act Rules and Regulations and the Prospectus delivered to the Placement Agent for use in connection with the offering of the Securities have been and will be identical to the respective versions thereof transmitted to the SEC for filing via the Electronic Data Gathering Analysis and Retrieval System (“EDGAR”), except to the extent permitted by Regulation S-T. For purposes of this Agreement, the words “amend,” “amendment,” “amended,” “supplement” or “supplemented” with respect to the Registration Statement, the Prospectus, any Free Writing Prospectus or the Disclosure Package shall mean amendments or supplements to the Registration Statement, the Prospectus, any Free Writing Prospectus or the Disclosure Package, as the case may be, as well as documents filed after the date of this Agreement and prior to the completion of the distribution of the Securities and incorporated by reference therein as described above.

(ii) Neither the SEC nor any state or other jurisdiction or other regulatory body has issued, and neither is, to the knowledge of the Company, threatening to issue, any stop order under the 1933 Act or other order suspending the effectiveness of the Registration Statement (as amended or supplemented) or preventing or suspending the use of any Preliminary Prospectus, Issuer Free Writing Prospectus, the Disclosure Package or the Prospectus or suspending the qualification or registration of the Securities for offering or sale in any jurisdiction nor instituted or, to the knowledge of the Company, threatened to institute proceedings for any such purpose. The Preliminary Prospectus at its date of issue and as of 5:00 p.m. Eastern Standard Time on the date hereof (the “Initial Time of Sale”), the Registration Statement at each effective date and the Initial Time of Sale, and the Prospectus and any amendments or supplements thereto or to the Registration Statement when they are filed with the SEC or become effective, as the case may be, contain or will contain, as the case may be, all statements that are required to be stated therein by, and in all material respects conform or will conform, as the case may be, to the requirements of, the 1933 Act and the 1933 Act Rules and Regulations. Neither the Registration Statement nor any amendment thereto, as of the applicable effective date, contains or will contain, as the case may be, any untrue statement of a material fact or omits or will omit to state any material fact required to be stated therein or necessary to make the statements therein, not misleading. Neither the Preliminary Prospectus, the Prospectus nor any supplement thereto contains or will contain, as the case may be, any untrue statement of a material fact or omits or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Disclosure Package nor any supplement thereto, at the Initial Time of Sale, contains or will contain, as the case may be, any untrue statement of a material fact or omits or will omit to state any material fact required to be stated therein or necessary to

make the statements therein, in the light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, the Company makes no representation or warranty as to information contained in or omitted from the Registration Statement, the Disclosure Package or the Prospectus, or any such amendment or supplement, in reliance upon, and in conformity with, written information furnished to the Company relating to the Placement Agent by or on behalf of the Placement Agent expressly for use in the preparation thereof (as provided in Section 12 hereof). There is no contract, agreement, understanding or arrangement, whether written or oral, or document required to be described in the Registration Statement, Disclosure Package or Prospectus or to be filed as an exhibit to the Registration Statement that is not described or filed as required. The documents incorporated by reference in the Disclosure Package or the Prospectus at the time they were filed with the SEC, complied in all material respects with the requirements of the Securities Exchange Act of 1934, as amended (the “1934 Act”), and the rules and regulations adopted by the SEC thereunder (the “1934 Act Rules and Regulations”). Any future documents incorporated by reference so filed, when they are filed, will comply in all material respects with the requirements of the 1934 Act and the 1934 Act Rules and Regulations.

(iii) The Company is eligible to use Issuer Free Writing Prospectuses in connection with the offering of the Securities pursuant to Rules 164 and 433 of the 1933 Act. Any Issuer Free Writing Prospectus that the Company is required to file pursuant to Rule 433(d) of the 1933 Act Rules and Regulations has been, or will be, timely filed with the SEC in accordance with the requirements of the 1933 Act Rules and Regulations. Each Issuer Free Writing Prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) of the 1933 Act or that was prepared by or on behalf of or used by the Company complies or will comply in all material respects with the requirements of the 1933 Act Rules and Regulations, including but not limited to legending and recordkeeping requirements. Except for the Issuer Free Writing Prospectuses, if any, identified in Schedule I hereto, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to any Free Writing Prospectus. Each Issuer Free Writing Prospectus, as of its issue date and at all times through the completion of the offering and sale of the Securities, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement. The Company filed the Registration Statement with the SEC before using any Free Writing Prospectus. The Company has satisfied and will satisfy the conditions of Rule 433 of the 1933 Act Rules and Regulations such that any electronic road show need not be filed with the SEC.

(iv) This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally and by general principles of equity.

(v) The Company and its Subsidiaries have been duly organized and are validly existing as corporations in good standing under the laws of the states or other

jurisdictions in which they are incorporated, with full power and authority (corporate and other) to own, lease and operate their properties and conduct their businesses as described in each of the Disclosure Package and the Prospectus and, with respect to the Company, to execute and deliver, and perform the Company's obligations under, this Agreement; the Company and its Subsidiaries are duly qualified to do business as foreign corporations in good standing in each state or other jurisdiction in which their ownership or leasing of property or conduct of business legally requires such qualification, except where the failure to be so qualified, individually or in the aggregate, would not have a Material Adverse Effect. The term "Material Adverse Effect" as used herein means any material adverse effect on the condition (financial or other), net worth, business, affairs, management, results of operations or cash flow of the Company and its Subsidiaries, taken as a whole. The Company has no significant subsidiaries (as such term is defined in Rule 1-02(w) of Regulation S-X promulgated by the Commission) other than those Subsidiaries listed on Schedule II hereto (the "Subsidiaries").

(vi) Neither the Company nor any of its Subsidiaries has sustained since the date of the latest audited financial statements included or incorporated by reference in the Disclosure Package any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth in each of the Disclosure Package and the Prospectus and, since the respective dates as of which information is given in the Disclosure Package, there has not been any change in the capital stock or long-term debt of the Company or any of its Subsidiaries or any Material Adverse Change, or any development involving a prospective Material Adverse Change, otherwise than as set forth in each of the Disclosure Package and the Prospectus. The term "Material Adverse Change" as used herein means any change that has a Material Adverse Effect.

(vii) The issuance and sale of the Securities and the execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions herein contemplated, will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any of its Subsidiaries under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the properties or assets of the Company or any of its Subsidiaries is subject, except to such extent as, individually or in the aggregate, does not have a Material Adverse Effect, nor will such action result in any violation of the provisions of the Company's certificate of incorporation or bylaws or any statute, rule, regulation or other law, or any order or judgment, of any court or governmental agency or body having jurisdiction over the Company or any of its Subsidiaries or any of their properties; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the execution, delivery and performance of this Agreement, the issuance and sale of the Securities or the consummation of the transactions contemplated hereby, except such as have been, or will be prior to the Closing Date, obtained under the 1933 Act or as may be required by the

National Association of Securities Dealers, Inc. (the “NASD”) and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Securities to the Investors.

(viii) The Company has duly and validly authorized capital stock as set forth in each of the Disclosure Package and Prospectus; all outstanding shares of Common Stock of the Company and the Shares conform, or when issued will conform, to the description thereof in the Prospectus and have been, or, when issued and paid for in the manner described herein will be, duly authorized, validly issued, fully paid and non-assessable; and the issuance of the Securities to be purchased from the Company hereunder is not subject to preemptive or other similar rights, or any restriction upon the voting or transfer thereof pursuant to applicable law or the Company’s certificate of incorporation, by-laws or governing documents or any agreement to which the Company or any of its Subsidiaries is a party or by which any of them may be bound. All corporate action required to be taken by the Company for the authorization, issuance and sale of the Securities has been duly and validly taken. The Warrants conform, or when issued will conform, to the description thereof in the Prospectus and have been duly and validly authorized by the Company and upon delivery to the Investors at the Closing Date will be valid and binding obligations of the Company, enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights and remedies of creditors generally or subject to general principles of equity. The Warrant Shares initially issuable upon exercise of the Warrants conform, or when issued will conform, to the description thereof in the Prospectus and have been duly authorized and reserved for issuance and when issued upon payment of the exercise price therefor will be validly issued, fully paid and nonassessable. Except as disclosed in each of the Disclosure Package and Prospectus, there are no outstanding subscriptions, rights, warrants, options, calls, convertible securities, commitments of sale or rights related to or entitling any person to purchase or otherwise to acquire any shares of, or any security convertible into or exchangeable or exercisable for, the capital stock of, or other ownership interest in, the Company, except for such options or rights as may have been granted by the Company to employees, directors or consultants pursuant to its stock option or stock purchase plans. The outstanding shares of capital stock of the Company’s Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company free and clear of any mortgage, pledge, lien, encumbrance, charge or adverse claim and are not the subject of any agreement or understanding with any person and were not issued in violation of any preemptive or similar rights; and there are no outstanding subscriptions, rights, warrants, options, calls, convertible securities, commitments of sale or instruments related to or entitling any person to purchase or otherwise acquire any shares of, or any security convertible into or exchangeable or exercisable for, the capital stock of, or other ownership interest in any of the Subsidiaries.

(ix) [Intentionally deleted].

(x) Each of the Company and its Subsidiaries is in possession of and is operating in compliance with all franchises, grants, authorizations, licenses, certificates,

permits, easements, consents, orders and approvals (“Permits”) from all state, federal, foreign and other regulatory authorities, and has satisfied the requirements imposed by regulatory bodies, administrative agencies or other governmental bodies, agencies or officials, that are required for the Company and its Subsidiaries lawfully to own, lease and operate their properties and conduct their businesses as described in each of the Disclosure Package and the Prospectus, and each of the Company and its Subsidiaries is conducting its business in compliance with all of the laws, rules and regulations of each jurisdiction in which it conducts its business, in each case with such exceptions, individually or in the aggregate, as would not have a Material Adverse Effect; each of the Company and its Subsidiaries has filed all notices, reports, documents or other information (“Notices”) required to be filed under applicable laws, rules and regulations, in each case, with such exceptions, individually or in the aggregate, as would not have a Material Adverse Effect; and, except as otherwise specifically described in each of the Disclosure Package and the Prospectus, neither the Company nor any of its Subsidiaries has received any notification from any court or governmental body, authority or agency, relating to the revocation or modification of any such Permit or to the effect that any additional authorization, approval, order, consent, license, certificate, permit, registration or qualification (“Approvals”) from such regulatory authority is needed to be obtained by any of them, in any case where it is reasonably expected that obtaining such Approvals or the failure to obtain such Approvals, individually or in the aggregate, would have a Material Adverse Effect.

(xi) The Company and its Subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns required to be filed prior to the date hereof and paid all taxes shown as due thereon; all such tax returns are complete and correct in all material respects; all tax liabilities are adequately provided for on the books of the Company and its Subsidiaries except to such extent as would not have a Material Adverse Effect; the Company and its Subsidiaries have made all necessary payroll tax payments; and the Company and its Subsidiaries have no knowledge of any tax proceeding or action pending or threatened against the Company or its Subsidiaries that, individually or in the aggregate, might have a Material Adverse Effect.

(xii) Except as described in each of the Disclosure Package and the Prospectus, the Company and its Subsidiaries own or possess, or can acquire on reasonable terms, adequate patents, patent licenses, trademarks, service marks and trade names necessary to conduct the business now operated by them, and neither the Company nor any of its Subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any patents, patent licenses, trademarks, service marks or trade names that, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

(xiii) The Company and its Subsidiaries own no real property in fee simple. The Company and its Subsidiaries have good and marketable title to all personal property owned by them, free and clear of all liens, encumbrances, restrictions and defects except such as are described in each of the Disclosure Package and the Prospectus or do not materially affect the value of such property and do not interfere with the use made and currently proposed by the Company to be made of such property; and any

property held under lease or sublease by the Company or any of its Subsidiaries is held under valid, subsisting and enforceable leases or subleases with such exceptions as are not material and do not interfere with the use made and currently proposed by the Company to be made of such property by the Company and its Subsidiaries; and neither the Company nor any of its Subsidiaries has any notice or knowledge of any material claim of any sort that has been, or may be, asserted by anyone adverse to the Company's or any of its Subsidiaries' rights as lessee or sublessee under any lease or sublease described above, or affecting or questioning the Company's or any of its Subsidiaries' rights to the continued possession of the leased or subleased premises under any such lease or sublease in conflict with the terms thereof.

(xiv) Except as described in each of the Disclosure Package and the Prospectus, there is no pending action, suit or other proceeding involving the Company or any of its Subsidiaries or any of their material assets for any failure of the Company or any of its Subsidiaries, or any predecessor thereof, to comply with any requirements of federal, state or local regulation relating to air, water, solid waste management, hazardous or toxic substances, or the protection of health, safety or the environment. Except as described in each of the Disclosure Package and the Prospectus, none of the property owned or leased by the Company or any of its Subsidiaries is, to the best knowledge of the Company, contaminated with waste or hazardous or toxic substances in material amounts or in amounts that pose a threat to employees or visitors, and neither the Company nor any of its Subsidiaries may be deemed an "owner or operator" of a "facility" or "vessel" that owns, possesses, transports, generates or disposes of a "hazardous substance" as those terms are defined in §9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.

(xv) No labor disturbance exists with the employees of the Company or any of its Subsidiaries or is imminent that, individually or in the aggregate, would have a Material Adverse Effect. None of the employees of the Company or any of its Subsidiaries is represented by a union and, to the best knowledge of the Company and its Subsidiaries, no union organizing activities are taking place. Neither the Company nor any of its Subsidiaries has violated any federal, state or local law or foreign law relating to discrimination in hiring, promotion or pay of employees, nor any applicable wage or hour laws, or the rules and regulations thereunder, or analogous foreign laws and regulations, that would, individually or in the aggregate, result in a Material Adverse Effect.

(xvi) The Company and its Subsidiaries are in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"); no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company and its Subsidiaries would have any liability; the Company and its Subsidiaries have not incurred and do not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published

interpretations thereunder (the “Code”); and each “pension plan” for which the Company or any of its Subsidiaries would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects, and nothing has occurred, whether by action or by failure to act, that would cause the loss of such qualification.

(xvii) The Company and its Subsidiaries maintain insurance of the types and in the amounts generally deemed adequate for its business, including, but not limited to, directors’ and officers’ insurance, insurance covering real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, all of which insurance is in full force and effect. Neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it and its Subsidiaries will not be able to renew their existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(xviii) Neither the Company nor any of its Subsidiaries is, or with the giving of notice or lapse of time or both would be, in default or violation with respect to its certificate of incorporation or by-laws. Neither the Company nor any of its Subsidiaries is, or with the giving of notice or lapse of time or both would be, in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the properties or assets owned by the Company or any of its Subsidiaries is subject, or in violation of any statutes, laws, ordinances or governmental rules or regulations or any orders or decrees to which it is subject, including, without limitation, Section 13 of the 1934 Act, which default or violation, individually or in the aggregate, would have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has, at any time during the past five years, (A) made any unlawful contributions to any candidate for any political office, or failed fully to disclose any contribution in violation of law, or (B) made any payment to any state, federal or foreign government official, or other person charged with similar public or quasi-public duty (other than payment required or permitted by applicable law).

(xix) Other than as set forth in each of the Disclosure Package and the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its Subsidiaries is a party or of which any property of the Company or any of its Subsidiaries is the subject that, if determined adversely to the Company or any of its Subsidiaries, would individually or in the aggregate have a Material Adverse Effect or that would materially and adversely affect the consummation of the transactions contemplated hereby or that is required to be disclosed in each of the Disclosure Package or the Prospectus; to the best of the Company’s knowledge, no such proceedings are threatened or contemplated.

(xx) The Company is not and, after giving effect to the offering and sale of the Securities, will not be a “holding company,” or a “subsidiary company” of a “holding company,” or an “affiliate” of a “holding company” or of a “subsidiary company,” as such terms are defined in the Public Utility Holding Company Act of 1935, as amended (the “1935 Act”).

(xxi) The Company is not and, after giving effect to the offering and sale of the Securities, will not be an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended (the “1940 Act”).

(xxii) At the earliest time after the filing of the Registration Statement at which the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(a)(2) of the 1933 Act Rules and Regulations) and as of the date hereof, the Company was not and is not an “ineligible issuer” as such term is defined in Rule 405 of the 1933 Act Rules and Regulations, without taking account of any determination by the SEC that it is not necessary that the Company be considered an “ineligible issuer.”

(xxiii) Deloitte & Touche LLP, the accounting firm that has issued an opinion on the financial statements filed with or incorporated by reference in and as a part of the Registration Statement, is an independent registered public accounting firm within the meaning of the 1933 Act and the 1933 Act Rules and Regulations and the rules and regulations of the Public Company Accounting Oversight Board (“PCAOB”) of the United States. The Company and each of its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (1) transactions are executed in accordance with management’s general or specific authorization; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management’s general or specific authorization; and (4) the recorded accounts for assets are compared with the existing assets at reasonable intervals and appropriate action is taken with respect thereto. The consolidated financial statements and schedules of the Company, including the notes thereto, filed with (or incorporated by reference) and as a part of the Registration Statement, Disclosure Package or Prospectus, present fairly the financial condition of the Company and its Subsidiaries as of the respective dates thereof and the consolidated results of operations and changes in financial position and consolidated statements of cash flow for the respective periods covered thereby, all in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved except as otherwise disclosed therein. All adjustments necessary for a fair presentation of results for such periods have been made. The selected financial data included or incorporated by reference in the Registration Statement, Disclosure Package and Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements. Any operating or other statistical data included or incorporated by reference in the Registration Statement, Disclosure Package and Prospectus comply in all material respects with the 1933 Act and the 1933 Act Rules and Regulations and present fairly the information shown therein and

are based on or derived from sources that the Company reasonably and in good faith believes are reliable and accurate, and such data agree with the sources from which they are derived. All non-GAAP financial information included (or incorporated by reference) in the Registration Statement, Disclosure Package or Prospectus complies in all material respects with the requirements of Regulation G and Item 10 of Regulation S-K under the 1933 Act.

(xxiv) Except as disclosed in each of the Disclosure Package and the Prospectus, no holder of any security of the Company has any right to require registration of shares of Common Stock or any other security of the Company because of the filing of the Registration Statement or the consummation of the transactions contemplated hereby and, except as disclosed in each of the Disclosure Package and the Prospectus, no person has the right to require registration under the 1933 Act of any shares of Common Stock or other securities of the Company. No person has the right, contractual or otherwise, to cause the Company to permit such person to underwrite the sale of any of the Securities. Except for this Agreement and that certain financial advisory agreement between the Company and First Albany Capital, there are no contracts, agreements or understandings between the Company or any of its Subsidiaries and any person that would give rise to a valid claim against the Company, its Subsidiaries or any Placement Agent for a brokerage commission, finder's fee or like payment in connection with the issuance, purchase and sale of the Securities.

(xxv) The Company has not distributed and, prior to the later to occur of (A) the Closing Date and (B) completion of the distribution of the Securities, will not distribute any offering material in connection with the offering and sale of the Securities other than the Registration Statement, the Preliminary Prospectus, any Issuer Free Writing Prospectus identified in Schedule I hereto, the Disclosure Package and the Prospectus.

(xxvi) The Company has not taken and will not take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Company's Common Stock, and the Company is not aware of any such action taken or to be taken by affiliates of the Company.

(xxvii) There is not currently and has not in the past been a failure on the part of the Company or, to the Company's knowledge, any of its respective directors or officers, in their capacities as such, to comply with any applicable provisions of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") and the rules and regulations promulgated in connection therewith, including Sections 302, 402 and 906, and the statements contained in any certification pursuant to such Act and related rules and regulations are complete and correct.

(xxviii) The Company has established and maintains disclosure controls and procedures and internal control over financial reporting as are currently required (as such terms are defined in Rule 13a-15 and 15d-15 under the 1934 Act); the Company's disclosure controls and procedures (i) are designed to ensure that information required to

be disclosed by the Company in the reports that it files or submits under the 1934 Act is accumulated and communicated to management, including the principal executive and principal financial officer of the Company, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized and reported, within the time periods specified in the 1934 Act Rules and Regulations; (ii) have been evaluated for effectiveness; and (iii) are effective in all material respects to perform the functions for which they were established.

(xxix) Except as discussed with the Company's auditors and audit committee and as disclosed in each of the Disclosure Package and the Prospectus, (i) there are no significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect the Company's ability to record, process, summarize, and report financial data and (ii) there is, and there has been, no fraud, whether or not material, that involves management or other employees who have a role in the Company's internal control over financial reporting.

(xxx) Since the date of the end of the last fiscal year for which audited financial statements are included or incorporated by reference in each of the Disclosure Package and the Prospectus, there have been no significant changes in internal control over financial reporting or in other factors that could significantly affect internal control over financial reporting, including any corrective actions with regard to significant deficiencies and material weaknesses.

(xxxi) The Company has received no written comments from the SEC staff regarding its periodic or current reports under the 1934 Act that remain unresolved and have not been disclosed in the Registration Statement, Disclosure Package and Prospectus.

(xxxii) No relationship, direct or indirect, exists between or among the Company and any director, officer or stockholder of the Company, or any member of his or her immediate family, or any customers or suppliers that is required to be described in the Registration Statement, the Disclosure Package or the Prospectus and that is not so described and described as required in material compliance with such requirement. There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any member of their respective immediate families, except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus. The Company has not, in violation of the Sarbanes-Oxley Act, directly or indirectly, extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any director or executive officer of the Company.

(xxxiii) To the best knowledge of the Company, no change in any laws or regulations is pending that could reasonably be expected to be adopted and if adopted, is reasonably expected to have, individually or in the aggregate with all such changes, a

Material Adverse Effect, except as set forth in or contemplated in each of the Disclosure Package and the Prospectus.

(xxxiv) The minute books of each of the Company and its Subsidiaries have been made available to the Placement Agent and contain a complete summary of all meetings and other actions of the directors and shareholders of each such entity in all material respects, and reflect all transactions referred to in such minutes accurately in all material respects.

(xxxv) Neither the Company nor any of its Subsidiaries, nor, to the Company's knowledge, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its Subsidiaries, has, directly or indirectly, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee or to foreign or domestic political parties or campaigns from corporate funds; violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

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

(xxxvii) Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity that, to the Company's knowledge, will use such proceeds, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxviii) No customer of or supplier to the Company or any of its Subsidiaries has ceased purchases or shipments of merchandise to the Company or indicated, to the Company's knowledge, an interest in decreasing or ceasing its purchases from the Company or otherwise modifying its relationship with the Company, other than in the normal and ordinary course of business consistent with past practices in a manner which would not, singly or in the aggregate, result in a Material Adverse Effect.

(b) Any certificate signed by any officer of the Company and delivered to the Placement Agent or to counsel for the Placement Agent shall be deemed a representation and warranty by the Company to the Placement Agent as to the matters covered thereby.

4. Additional Covenants. The Company covenants and agrees with the Placement Agent that:

(a) The Company will timely transmit copies of the Prospectus, and any amendments or supplements thereto, to the SEC for filing pursuant to Rule 424(b) of the 1933 Act Rules and Regulations.

(b) The Company has furnished or will deliver to the Placement Agent and to counsel for the Placement Agent (i) such number of signed copies of the Registration Statement as originally filed, including copies of exhibits thereto (other than any exhibits incorporated by reference therein), and any amendments and supplements to the Registration Statement (including all documents incorporated by reference therein), as may be reasonably requested by the Placement Agent or counsel for the Placement Agent and (ii) a signed copy of each consent and certificate included or incorporated by reference in, or filed as an exhibit to, the Registration Statement as so amended or supplemented; the Company will deliver to the Placement Agent as soon as practicable after the date of this Agreement as many copies of the Disclosure Package and the Prospectus (including all documents incorporated by reference therein) as the Placement Agent may reasonably request for the purposes contemplated by the 1933 Act; the Company will promptly advise the Placement Agent of any request of the SEC for amendment of the Registration Statement or for supplement to the Disclosure Package or the Prospectus or for any additional information, and of the issuance by the SEC or any state or other jurisdiction or other regulatory body of any stop order under the 1933 Act or other order suspending the effectiveness of the Registration Statement (as amended or supplemented) or preventing or suspending the use of any Preliminary Prospectus, Disclosure Package or the Prospectus or suspending the qualification or registration of the Securities or the Warrant Shares for offering or sale in any jurisdiction, and of the institution or threat of any proceedings therefor, of which the Company shall have received notice or otherwise have knowledge prior to the completion of the distribution of the Securities; and the Company will use its best efforts to prevent the issuance of any such stop order or other order and, if issued, to secure the prompt removal thereof.

(c) The Company will obtain the Placement Agent's consent before taking, or failing to take, any action that would cause the Company to make an offer of Securities that would constitute an Issuer Free Writing Prospectus or to be required to file a Free Writing Prospectus pursuant to Rule 433(d) of the 1933 Act Rules and Regulations, other than the Issuer Free Writing Prospectuses, if any, listed on Schedule I hereto.

(d) The Company will not take any action that would result in the Placement Agent being required to file with the SEC pursuant to Rule 433(d) of the 1933 Act Rules and Regulations a Free Writing Prospectus prepared by or on behalf of the Placement Agent that the Placement Agent otherwise would not have been required to file thereunder.

(e) If the Disclosure Package is being used to solicit offers to buy the Securities at a time when the Prospectus is not yet available to prospective purchasers and any

event shall occur or condition exist as a result of which it is necessary to amend or supplement the Disclosure Package in writing in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or if, in the opinion of counsel for the Placement Agent, it is necessary to amend or supplement the Disclosure Package to comply with applicable law, the Company will forthwith prepare, file with the SEC and furnish, at its own expense, to the Placement Agent, either amendments or supplements to the Disclosure Package so that statements in the Disclosure Package as so amended or supplemented will not, in light of the circumstances when delivered to a prospective purchaser, be misleading or so that the Disclosure Package, as amended or supplemented, will comply with law.

(f) The Company will not file any amendment or supplement to the Registration Statement, the Disclosure Package, the Prospectus (or any other prospectus relating to the Securities filed pursuant to Rule 424(b) of the 1933 Act Rules and Regulations that differs from the Prospectus as filed pursuant to such Rule 424(b)) and will not file any document under the 1934 Act before the termination of the offering of the Securities by the Company if the document would be deemed to be incorporated by reference into the Registration Statement, the Disclosure Package, or the Prospectus, of which the Placement Agent shall not previously have been advised and furnished with a copy or to which the Placement Agent shall have reasonably objected or which is not in compliance with the 1933 Act Rules and Regulations; and the Company will promptly notify the Placement Agent after it shall have received notice thereof of the time when any amendment to the Registration Statement becomes effective or when any supplement to, the Disclosure Package, the Prospectus has been filed.

(g) During the period when a prospectus (or in lieu thereof, the notice contemplated by Rule 173(a) of the 1933 Act Rules and Regulations) relating to any of the Securities is required to be delivered under the 1933 Act by any Placement Agent, the Company will comply, at its own expense, with all requirements imposed by the 1933 Act and the 1933 Act Rules and Regulations, as now and hereafter amended, and by the rules and regulations of the SEC thereunder, as from time to time in force, as necessary to permit the continuance of sales of or dealing in the Securities during such period in accordance with the provisions hereof and as contemplated by the Prospectus.

(h) If, during the period when a prospectus (or in lieu thereof, the notice contemplated by Rule 173(a) of the 1933 Act Rules and Regulations) relating to any of the Securities is required to be delivered under the 1933 Act by any Placement Agent, (i) any event relating to or affecting the Company or of which the Company shall be advised in writing by the Placement Agent shall occur as a result of which, in the opinion of the Company or the Placement Agent, the Disclosure Package or the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (ii) any event shall occur as a result of which any Free Writing Prospectus conflicted or would conflict with the information in the Registration Statement, or (iii) it shall be necessary to amend or supplement the Registration Statement, the Disclosure Package or the Prospectus to comply with the 1933 Act, the 1933 Act Rules and Regulations, the 1934 Act or the 1934 Act Rules and Regulations, the Company will forthwith at its expense prepare and file with the SEC, and furnish to the Placement Agent a reasonable number of copies of, such

amendment or supplement or other filing that will correct such statement or omission or effect such compliance.

(i) During the period when a prospectus (or in lieu thereof, the notice contemplated by Rule 173(a) of the 1933 Act Rules and Regulations) relating to any of the Securities is required to be delivered under the 1933 Act by any Placement Agent, the Company will furnish such proper information as may be lawfully required and otherwise cooperate in qualifying the Securities for offer and sale under the securities or blue sky laws of such jurisdictions as the Placement Agent may reasonably designate and will file and make in each year such statements or reports as are or may be reasonably required by the laws of such jurisdictions; *provided, however*, that the Company shall not be required to qualify as a foreign corporation or shall be required to qualify as a dealer in securities or to file a general consent to service of process under the laws of any jurisdiction.

(j) In accordance with Section 11(a) of the 1933 Act and Rule 158 of the 1933 Act Rules and Regulations, the Company has made generally available to its security holders and to holders of the Securities an earnings statement (which need not be audited) in reasonable detail covering the 12 months beginning not later than the first day of the month next succeeding the month in which occurred the effective date (within the meaning of Rule 158) of the Registration Statement.

(k) The Company will apply the proceeds from the sale of the Securities as set forth in the description under “Use of Proceeds” in the Disclosure Package and the Prospectus, which description complies in all respects with the requirements of Item 504 of Regulation S-K.

(l) The Company will promptly provide the Placement Agent with copies of all correspondence to and from, and all documents issued to and by, the SEC in connection with the registration of the Securities under the 1933 Act or relating to any documents incorporated by reference into the Registration Statement, the Disclosure Package or the Prospectus.

(m) Prior to the Closing Date, the Company will furnish to the Placement Agent, as soon as they have been prepared, copies of any unaudited interim consolidated financial statements of the Company and its Subsidiaries for any periods subsequent to the periods covered by the financial statements appearing in the Registration Statement and the Prospectus or incorporated therein by reference.

(n) The Company will use its best efforts to obtain approval for, and maintain the listing of the Shares and the Warrant Shares for trading on, the Nasdaq Global Market.

(o) The Company will cause its directors and officers to furnish to the Placement Agent, on or prior to the date of this Agreement, a letter or letters, in form and substance satisfactory to counsel for the Placement Agent, pursuant to which each such person shall agree not to, and the Company will not, and will not publicly announce any intention to, during the period ending 90 days after the date of the Prospectus, without the prior written consent of the Placement Agent, directly or indirectly, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares

of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock; (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; or (3) file any registration statement with the SEC relating to the offering of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock.

(p) The restrictions contained in the preceding paragraph shall not apply to (a) the issuance by the Company of shares of Common Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof of which the Placement Agent has been advised in writing or the granting or exercise of options or stock purchase rights pursuant to the Company's stock option and stock purchase plans, whenever granted; provided that the underlying shares of Common Stock issued to any person who has delivered a lock-up agreement pursuant to this Section 4(o) hereto shall continue to be subject to the restrictions contained in the immediately preceding paragraph or such lock-up agreement, as applicable; (b) the issuance by the Company of shares of Common Stock or options to purchase shares of Common Stock to, or the repurchase by the Company of unvested shares of Common Stock upon termination of service from, an employee, director, consultant other service provider, pursuant to the Company's stock option or stock purchase plans in effect on the date hereof or approved by the stockholders before the date hereof; provided that the shares of Common Stock or options to purchase shares of Common Stock issued to the Company's directors and executive officers shall be subject to the restrictions contained in the lock-up agreements delivered pursuant to this Section 4(o); and (c) the filing by the Company of any registration statement with the Commission on Form S-8 relating to the offering of securities pursuant to the terms of a stock option or stock purchase plan of the Company in effect on the date hereof or approved by the stockholders before the date hereof.

(q) Notwithstanding the foregoing, if (1) during the last 17 days of the 90-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs; or (2) prior to the expiration of the 90-day restricted period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the 90-day period, the restrictions imposed by this agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. The Company shall promptly notify the Placement Agent of any earnings release, news or event that may give rise to an extension of the initial 90-day restricted period.

(r) The Company and its Subsidiaries will maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls that provide reasonable assurance that (1) transactions are executed in accordance with management's general or specific authorization, (2) transactions are recorded as necessary to permit the preparation of the Company's consolidated financial statements in conformity with generally accepted accounting principles and to maintain accountability for the assets of the Company and its Subsidiaries, (3) access to the assets of the Company and its Subsidiaries is permitted only in accordance with management's general or specific authorization, and (4) the recorded accounts

of the assets of the Company and its Subsidiaries are compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(s) During any period in which a prospectus (or in lieu thereof, a notice contemplated by Rule 173(a) of the 1933 Act Rules and Regulations) is required by law to be delivered by the Placement Agent, the Company will promptly file all documents required to be filed with the SEC pursuant to Sections 13, 14 or 15(d) of the 1934 Act and will furnish to its security holders annual reports containing financial statements audited by independent public accountants and quarterly reports containing financial statements and financial information, which may be unaudited. The Company will deliver to the Placement Agent similar reports with respect to any significant Subsidiaries, as that term is defined in the 1933 Act Rules and Regulations, that are not consolidated in the Company's financial statements. Any report, document or other information required to be furnished under this paragraph(s) shall be furnished as soon as practicable after such report, document or information becomes available.

(t) The Company will comply with all applicable securities and other applicable laws, rules and regulations, including, without limitation, the Sarbanes-Oxley Act of 2002, and will use its best efforts to cause the Company's directors and officers, in their capacities as such, to comply with such laws, rules and regulations, including, without limitation, the provisions of the Sarbanes-Oxley Act of 2002.

(u) Except as required by law, prior to the Closing Date, the Company will issue no press release or other communication, directly or indirectly, and will hold no press conferences with respect to the Company or any of its Subsidiaries, the financial condition, results of operations, business, properties, assets or liabilities of the Company or any of its Subsidiaries, or the offering of the Securities, without the Placement Agent's prior written consent which shall include e-mail. In the event that any such disclosure is required by law, the Company will promptly notify the Placement Agent of such required disclosure prior to issuing any press release or other communication or holding any press conference, and, to the extent reasonably practicable, the Company will permit the Placement Agent to comment on any press release or other communication.

(v) The Company shall reserve and keep available at all times a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue shares of Common Stock upon the exercise of the Warrants.

(w) If the Company elects to rely on Rule 462(b) under the 1933 Act, the Company shall both file an Abbreviated Registration Statement with the SEC in compliance with Rule 462(b) and pay the applicable fees in accordance with Rule 111 of the 1933 Act by the earlier of (i) 10:00 p.m., Eastern Standard time, on the date of this Agreement, and (ii) the time that confirmations are given or sent, as specified by Rule 462(b)(2).

5. Conditions of Closing. The Closing shall be subject to the accuracy, as of the date hereof and as of the Closing Date, of the representations and warranties of the Company contained herein, to the performance by the Company of its covenants and obligations hereunder, and to the following additional conditions, and the Company shall not issue or sell the Securities unless and until all of the conditions of this Section 5 shall have been satisfied or waived by the Placement Agent:

(a) The Registration Statement has been declared effective by the SEC and the offering of the Securities by the Company complies with Rule 415 of the 1933 Act Rules and Regulations. All filings required by Rule 424, Rule 430A, Rule 430B and Rule 433(d) of the 1933 Act Rules and Regulations will be promptly made. No stop order suspending the effectiveness of the Registration Statement, as amended from time to time, shall have been issued and no proceeding for that purpose shall have been initiated or, to the knowledge of the Company or the Placement Agent, threatened or contemplated by the SEC, and any request of the SEC for additional information (to be included in the Registration Statement, the Disclosure Package or the Prospectus or otherwise) shall have been complied with to the reasonable satisfaction of the Placement Agent.

(b) The Placement Agent shall not have advised the Company on or prior to the Closing Date, that the Registration Statement, the Disclosure Package or Prospectus or any amendment or supplement thereto contains an untrue statement of fact that, in the opinion of counsel to the Placement Agent, is material, or omits to state a fact that, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) On the Closing Date, the Placement Agent shall have received the opinion of Waller Lansden Dortch & Davis, LLP, counsel for the Company, addressed to the Placement Agent and the Investors and dated the Closing Date, in substance as set forth on Exhibit A hereto. Such counsel shall also have furnished to the Placement Agent a written statement, addressed to the Placement Agent and dated the Closing Date, in substance as set forth on Exhibit B hereto.

(d) On the Closing Date, the Placement Agent shall have received the opinion of Lowenstein Sandler PC, counsel to the Placement Agent, addressed to the Placement Agent and dated the Closing Date, with respect to such matters as the Placement Agent may reasonably require; and the Company shall have furnished to such counsel such documents as it may reasonably request for the purposes of enabling it to review or pass on such matters.

(e) On the date of this Agreement and on the Closing Date, the Placement Agent shall have received from Deloitte & Touche LLP, a letter or letters, dated the date of this Agreement and the Closing Date, respectively, in form and substance satisfactory to the Placement Agent and counsel for the Placement Agent, confirming that they are independent registered public accountants with respect to the Company within the meaning of the 1933 Act and the published Rules and Regulations and the rules and regulations of the PCAOB, and stating the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to placement agents in connection with registered public offerings.

(f) Except as contemplated in each of the Disclosure Package and the Prospectus, (i) neither the Company nor any of its Subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Disclosure Package and the Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and (ii) subsequent to the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus, neither the Company nor any of its Subsidiaries shall have incurred any liability or obligation, direct or contingent, or entered into any transactions, and there shall not have been any change in the capital stock or short-term or long-term debt of the Company and its Subsidiaries or any change, or any development involving or which is reasonably expected to involve a prospective change in the condition (financial or other), net worth, business, affairs, management, results of operations or cash flow of the Company or its Subsidiaries, the effect of which, in any such case described in clause (i) or (ii), is in your reasonable judgment so material or adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities being delivered on such Closing Date on the terms and in the manner contemplated in each of the Disclosure Package and the Prospectus.

(g) There shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange or The Nasdaq Global Market or the establishing on such exchanges by the SEC or by such exchanges of minimum or maximum prices that are not in force and effect on the date hereof; (ii) a suspension or material limitation in trading in the Company's securities on the Nasdaq Global Market or the establishing on such exchange by the SEC or by such exchange of minimum or maximum prices that are not in force and effect on the date hereof; (iii) a general moratorium on commercial banking activities declared by either federal or any state authorities; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war, which in your reasonable judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities in the manner contemplated in the Prospectus; or (v) any calamity or crisis, change in national, international or world affairs, act of God, change in the international or domestic markets, or change in the existing financial, political or economic conditions in the United States or elsewhere, that in your reasonable judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities in the manner contemplated in each of the Disclosure Package and the Prospectus.

(h) The Placement Agent shall have received certificates, dated the Closing Date and signed by the Chief Executive Officer and the Chief Financial Officer of the Company, in their capacities as such, stating that:

(i) the conditions set forth in Section 5(a) have been fully satisfied;

(ii) they have carefully examined the Registration Statement, the Disclosure Package and the Prospectus as amended or supplemented and all documents incorporated by reference therein and nothing has come to their attention that would lead them to believe that any of the Registration Statement, the Disclosure Package or the Prospectus, or any amendment or supplement thereto or any documents incorporated by

reference therein as of their respective effective, issue or filing dates, contained, and the Prospectus as amended or supplemented and all documents incorporated by reference therein and when read together with the documents incorporated by reference therein, at such Closing Date, contains any untrue statement of a material fact, or omits to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(iii) since the Effective Date, there has occurred no event required to be set forth in an amendment or supplement to the Registration Statement, the Disclosure Package or the Prospectus which has not been so set forth; there has been no Issuer Free Writing Prospectus required to be filed under Rule 433(d) of the 1933 Act Rules and Regulations that has not been so filed; and there has been no document required to be filed under the 1934 Act and the 1934 Act Rules and Regulations that upon such filing would be deemed to be incorporated by reference into the Disclosure Package or the Prospectus that has not been so filed;

(iv) all representations and warranties made herein by the Company are true and correct in all material respects (except for those representations and warranties which are qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) at such Closing Date, with the same effect as if made on and as of such Closing Date, and all agreements herein to be performed or complied with by the Company on or prior to such Closing Date have been duly performed and complied with by the Company;

(v) neither the Company nor any of its Subsidiaries has sustained since the date of the latest audited financial statements included or incorporated by reference in each of the Disclosure Package and the Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and

(vi) except as disclosed in each of the Disclosure Package and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement, each of the Disclosure Package and the Prospectus, neither the Company nor any of its Subsidiaries has incurred any liabilities or obligations, direct or contingent, other than in the ordinary course of business, or entered into any transactions not in the ordinary course of business, which in either case are material to the Company or such Subsidiary; and there has not been any change in the capital stock or material increase in the short-term debt or long-term debt of the Company or any of its Subsidiaries or any material adverse change or any development involving or that is reasonably expected to involve a prospective material adverse change, in the condition (financial or other), net worth, business, affairs, management, results of operations or cash flow of the Company and its Subsidiaries taken as a whole; and there has been no dividend or distribution of any kind, paid or made by the Company on any class of its capital stock.

(i) The Company shall have furnished to the Placement Agent at the Closing Date such further information, opinions, certificates, letters and documents as the Placement Agent may have reasonably requested.

(j) The Shares and the Warrant Shares shall have been listed for trading on The Nasdaq Global Market.

(k) The Placement Agent shall have received duly and validly executed letter agreements referred to in Section 4(p) hereof.

(l) The NASD shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the placement agency terms and conditions.

(m) All such opinions, certificates, letters and documents will be in compliance with the provisions hereof only if they are satisfactory in form and substance to the Placement Agent and to Lowenstein Sandler PC, counsel for the Placement Agent. The Company will furnish the Placement Agent with such signed and conformed copies of such opinions, certificates, letters and documents as the Placement Agent may request.

(n) If any of the conditions specified above in this Section 5 shall not have been satisfied at or prior to the Closing Date or waived by the Placement Agent in writing, this Agreement may be terminated by the Placement Agent on written notice to the Company, whereupon the Company shall not issue or sell the Securities.

6. Indemnification and Contribution. (a) The Company will indemnify and hold harmless the Placement Agent from and against any losses, damages or liabilities, joint or several, to which the Placement Agent may become subject, under the 1933 Act or otherwise, insofar as such losses, damages or liabilities (or actions or claims in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained (A) in any Preliminary Prospectus, the Registration Statement, any Issuer Free Writing Prospectus that the Company has filed or is required to file pursuant to Rule 433(d) of the 1933 Act Rules and Regulations, the Prospectus or any other prospectus relating to the Securities, or any amendment or supplement thereto, (B) in any blue sky application or other document executed by the Company or based on any information furnished in writing by the Company, filed in any state or other jurisdiction in order to qualify any or all of the Securities under the securities laws thereof (the "Blue Sky Application") or (C) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities ("Marketing Materials"), including any road show or investor presentations made to investors by the Company (whether in person or electronically), when read together with the Registration Statement and the Prospectus, (ii) the omission or alleged omission to state in any Preliminary Prospectus, the Registration Statement, any Issuer Free Writing Prospectus that the Company has filed or is required to file pursuant to Rule 433(d) of the 1933 Act Rules and Regulations, the Prospectus or any other prospectus relating to the Securities, or any amendment or supplement thereto or in any Blue Sky Application or in any Marketing Materials, when read together with the Registration Statement and the Prospectus, a material fact required to be stated therein or

necessary to make the statements therein not misleading, or (iii) any act or failure to act or any alleged act or failure to act by the Placement Agent in connection with, or relating in any manner to, the Securities or the offering contemplated hereby, and that is the result of the matters giving rise to any loss, damage or liabilities (or actions or claims in respect thereof) arising out of or based upon matters covered by clause (i) or (ii) above (provided that the Company shall not be liable under this clause (iii) to the extent that it is determined in a final judgment by a court of competent jurisdiction that such loss, damage or liabilities (or actions or claims in respect thereof) resulted directly from any such acts or failures to act undertaken or omitted to be taken by the Placement Agent through its gross negligence or willful misconduct), and will reimburse the Placement Agent promptly upon demand for any legal or other expenses incurred by the Placement Agent in connection with investigating, preparing, pursuing or defending against or appearing as a third party witness in connection with any such loss, damage, liability or action or claim, including, without limitation, any investigation or proceeding by any governmental agency or body, commenced or threatened, including the reasonable fees and expenses of counsel to the indemnified party, as such expenses are incurred (including such losses, damages, liabilities or expenses to the extent of the aggregate amount paid in settlement of any such action or claim, provided that (subject to Section 6(d) hereof) any such settlement is effected with the written consent of the Company); *provided, however*, that the Company shall not be liable in any such case to the extent, but only to the extent, that any such loss, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, the Registration Statement, any Issuer Free Writing Prospectus that the Company has filed or is required to file pursuant to Rule 433(d) of the 1933 Act Rules and Regulations, the Prospectus or any other prospectus relating to the Securities, or any such amendment or supplement, or in any Blue Sky Application or in any Marketing Materials, read together with the Registration Statement and the Prospectus, in reliance upon and in conformity with written information relating to the Placement Agent furnished to the Company by the Placement Agent expressly for use in the preparation thereof (as provided in Section 12 hereof); *provided, further*, that the Company shall not be liable in any such case to the extent, but only to the extent, that any such loss, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, any Issuer Free Writing Prospectus listed on Schedule I hereto, the Prospectus or any other prospectus relating to the Securities, or any such amendment or supplement, if the Placement Agent failed to convey the Disclosure Package to the investor making the claim prior to the Initial Time of Sale or if such untrue statement or omission was made in a Preliminary Prospectus, such statement was corrected in the Disclosure Package prior to such time.

(b) The Placement Agent will indemnify and hold harmless the Company from and against any losses, damages or liabilities to which the Company may become subject, under the 1933 Act or otherwise, insofar as such losses, damages or liabilities (or actions or claims in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement, any Issuer Free Writing Prospectus that the Company has filed or is required to file pursuant to Rule 433(d) of the 1933 Act Rules and Regulations, the Prospectus or any other prospectus relating to the Securities, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to

the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in (i) any Preliminary Prospectus, the Registration Statement, any Issuer Free Writing Prospectus that the Company has filed or is required to file pursuant to Rule 433(d) of the 1933 Act Rules and Regulations, the Prospectus or any other prospectus relating to the Securities, or any such amendment or supplement, in reliance upon and in conformity with written information relating to the Placement Agent furnished to the Company by the Placement Agent, expressly for use in the preparation thereof (as provided in Section 12 hereof) or (ii) any Preliminary Prospectus, any Issuer Free Writing Prospectus listed on Schedule I hereto, the Prospectus or any other prospectus relating to the Securities, or any such amendment or supplement, if the Placement Agent failed to convey the Disclosure Package to the investor making the claim prior to the Initial Time of Sale. The Placement Agent will reimburse the Company for any legal or other expenses incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred (including such losses, damages, liabilities or expenses to the extent of the aggregate amount paid in settlement of any such action or claim, provided that (subject to Section 6(c) hereof) any such settlement is effected with the written consent of the Placement Agent). Notwithstanding the provisions of this Section 6(b), in no event shall any indemnity by the Placement Agent under this Section 6(b) exceed the total compensation received by such Placement Agent in accordance with this Agreement.

(c) Promptly after receipt by an indemnified party under Section 6(a) or 6(b) hereof of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under Section 6(a) or 6(b) hereof, notify each such indemnifying party in writing of the commencement thereof, but the failure so to notify such indemnifying party shall not relieve such indemnifying party from any liability except to the extent that it has been prejudiced in any material respect by such failure or from any liability that it may have to any such indemnified party otherwise than under Section 6(a) or 6(b) hereof. In case any such action shall be brought against any such indemnified party and it shall notify each indemnifying party of the commencement thereof, each such indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party under Section 6(a) or 6(b) hereof similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of such indemnified party, be counsel to such indemnifying party), and, after notice from such indemnifying party to such indemnified party of its election so to assume the defense thereof, such indemnifying party shall not be liable to such indemnified party under Section 6(a) or 6(b) hereof for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. The indemnified party shall have the right to employ its own counsel in any such action, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the employment of counsel by such indemnified party at the expense of the indemnifying party has been authorized by the indemnifying party, (ii) the indemnified party shall have been advised by such counsel that there may be a conflict of interest between the indemnifying party and the indemnified party in the conduct of the defense, or certain aspects of the defense, of such action (in which case the indemnifying party shall not have the right to direct the defense of such action with respect to those matters or aspects of the defense on which a conflict exists or may exist on behalf of the indemnified party) or (iii) the indemnifying party shall not in fact have employed counsel reasonably satisfactory to such

indemnified party to assume the defense of such action, in any of which events such fees and expenses to the extent applicable shall be borne, and shall be paid as incurred, by the indemnifying party. If at any time such indemnified party shall have requested such indemnifying party under Section 6(a) or 6(b) hereof to reimburse such indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a) or 6(b) hereof effected without its written consent if (I) such settlement is entered into more than 45 days after receipt by such indemnifying party of such request for reimbursement, (II) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (III) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request for reimbursement prior to the date of such settlement. No such indemnifying party shall (1) without the written consent of such indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action, claim or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not such indemnified party is an actual or potential party to such action, claim or proceeding) unless such settlement, compromise or judgment (A) includes an unconditional release of such indemnified party from all liability arising out of such action, claim or proceeding and (B) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any such indemnified party or (2) be liable for any settlement or any such action effected without its written consent, but if settled with the consent of the indemnifying party or if there be a final judgment of the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. In no event shall such indemnifying parties be liable for the fees and expenses of more than one counsel, in addition to any local counsel, for all such indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances.

(d) If the indemnification provided for in this Section 6 is by its terms due and owing but is unavailable or insufficient to indemnify or hold harmless an indemnified party under Section 6(a) or 6(b) hereof in respect of any losses, damages or liabilities (or actions or claims in respect thereof) referred to therein, then each indemnifying party under Section 6(a) or 6(b) hereof shall contribute to the amount paid or payable by such indemnified party as a result of such losses, damages or liabilities (or actions or claims in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Placement Agent, on the other hand, from the offering of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under Section 6(c) hereof and such indemnifying party was prejudiced in a material respect by such failure, then each such indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault, as applicable, of the Company, on the one hand, and the Placement Agent, on the other hand, in connection with the statements or omissions that resulted in such losses, damages or liabilities (or actions or claims in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by, as applicable, the Company, on the one hand, and the Placement Agent, on the other hand, shall be deemed to be in the same proportion as the total net proceeds from such offering (before deducting expenses) received by the Company bear

to the portion of the total Placement Fee received by the Placement Agent. The relative fault, as applicable, of the Company, on the one hand, and the Placement Agent, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Placement Agent, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Placement Agent agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to above in this Section 6(d). The amount paid or payable by such an indemnified party as a result of the losses, damages or liabilities (or actions or claims in respect thereof) referred to above in this Section 6(d) shall be deemed to include any legal or other expenses incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6(d), the Placement Agent shall not be required to contribute any amount in excess of the amount by which the total price at which the Securities were sold to the Investors exceeds the amount of any damages that the Placement Agent has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The obligations of the Company under this Section 6 shall be in addition to any liability that the Company may otherwise have and shall extend, upon the same terms and conditions, to each officer, director, employee, agent or other representative and to each person, if any, who controls the Placement Agent within the meaning of the 1933 Act; and the obligations of the Placement Agent under this Section 6 shall be in addition to any liability that the Placement Agent may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company who signed the Registration Statement and to each person, if any, who controls the Company within the meaning of the 1933 Act.

(f) The parties to this Agreement hereby acknowledge that they are sophisticated business persons who were represented by counsel during the negotiations regarding the provisions hereof, including, without limitation, the provisions of this Section 6, and are fully informed regarding such provisions. They further acknowledge that the provisions of this Section 6 fairly allocate the risks in light of the ability of the parties to investigate the Company and its business in order to assure that adequate disclosure is made in the Registration Statement, any Preliminary Prospectus, the Disclosure Package, the Prospectus, and any supplement or amendment thereof, as required by the 1933 Act.

7. Representations and Agreements to Survive Delivery. The respective representations, warranties, agreements and statements of the Company and the Placement Agent, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain operative and in full force and effect regardless of any investigation (or any statement as to the results thereof) made by or on behalf of the Placement Agent or any controlling person of the Placement Agent, the Company or any of its officers, directors or any controlling persons, and shall survive the Closing.

8. [Reserved].

9. Effective Date and Termination. This Agreement may be terminated by the Placement Agent at any time at or prior to the Closing Date (by telephone, facsimile or telegram, confirmed by letter) if any condition specified in Section 5 hereof shall not have been satisfied on or prior to the Closing Date; provided, however, that the provisions of this Section 9 and of Section 6 and Section 10 hereof shall at all times be effective. Any such termination shall be without liability of any party to any other party except as provided in Section 6 or Section 10 hereof.

10. Costs and Expenses. The Company, whether or not the transactions contemplated hereby are consummated or this Agreement is terminated, will bear and pay the costs and expenses incident to the registration of the Securities and offering thereof, including, without limitation, (a) all expenses (including stock transfer taxes) incurred in connection with the delivery to the several Investors of the Securities, the filing fees of the SEC, and the fees and expenses of the Company's counsel and accountants, (b) the preparation, printing, filing, delivery and shipping of the Registration Statement, each Preliminary Prospectus, the Disclosure Package, any Free Writing Prospectus, the Prospectus and any amendments or supplements thereto and the printing, delivery and shipping of this Agreement and other offering documents, including the Blue Sky Memoranda, and any instruments or documents related to any of the foregoing, (c) the furnishing of copies of such documents to the Placement Agent, (d) the registration or qualification of the Securities for offering and sale under the securities laws of the various states and other jurisdictions, (e) the filing fees of the NASD (if any), (f) the fees and disbursements of counsel to the Placement Agent relating to the Securities and the offering thereof, including, without limitation, relating to any review of the offering by the NASD, (g) all printing and engraving costs related to preparation of the certificates for the Securities, including transfer agent and registrar fees, (h) all fees and expenses relating to the listing of the Shares and the Warrant Shares for trading on The Nasdaq Global Market, (i) the costs and expenses relating to any investor presentations or any "road show" undertaken in connection with the marketing of the offering of the Securities, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers or representatives of the Company or the Placement Agent and any such consultants, and the cost of any aircraft chartered in connection with the road show and (j) all of the other costs and expenses incident to the performance by the Company of the registration and offering of the Securities; provided, that the Placement Agent will bear and pay any advertising costs and expenses incurred by the Placement Agent incident to the offering of the Securities. Notwithstanding the foregoing, in no event shall the Company be obligated to reimburse the Placement Agent for fees and expenses in excess of \$125,000 in the aggregate. The Company shall reimburse the Placement Agent within 10 days of receiving an invoice (and such other supporting documentation as may be reasonably requested by the Company) from the Placement Agent for such costs and expenses.

11. Notices. All notices or communications hereunder, except as herein otherwise specifically provided, shall be in writing and, if sent to the Placement Agent, shall be mailed, delivered, sent by facsimile transmission, or telegraphed and confirmed, to A.G. Edwards & Sons, Inc., One North Jefferson Avenue, St. Louis, Missouri 63103, Attention: Albert F. Bender, III, facsimile number (314) 955-6996, with a copy (which shall not constitute notice) to: Lowenstein Sandler PC, 1251 Avenue of the Americas, New York, New York 10020, Attention: Michael D. Maline, Esq., facsimile number (973) 422-6873; or if sent to the Company, shall be mailed, delivered, sent by facsimile transmission, or telegraphed and confirmed to Capstone Turbine Corporation, 21211 Nordhoff Street, Chatsworth, California 91311, Attention: Chief Financial Officer, facsimile number (818) 734-5321, with a copy (which shall not constitute notice) to: Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, Attention: Chase Cole, Esq., facsimile number (615) 244-6804.

12. Information Furnished by Placement Agent. The statements set forth in the sixth and seventh paragraphs under the caption "Plan of Distribution" in the Preliminary Prospectus, Prospectus and the Disclosure Package, solely to the extent included in reliance upon and in conformity with written information related to the Placement Agent furnished to the Company by the Placement Agent, expressly for use in the preparation thereof, constitute the only information furnished by or on behalf of the Placement Agent as such information is referred to herein.

13. Parties. This Agreement shall inure to the benefit of and be binding upon the Placement Agent, the Company and, to the extent provided in Sections 6 and 7, the officers and directors of the Company and each person who controls the Company or the Placement Agent and their respective heirs, executors, administrators, and successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, corporation or other entity any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained; this Agreement and all conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and their respective successors and said controlling persons and with respect to said Sections 6 and 7 said officers and directors, and for the benefit of no other person, corporation or other entity.

14. Entire Agreement; Amendments and Waivers. This Agreement, together with that certain Engagement Letter dated January 8, 2007, by and between the Company and the Placement Agent, as amended on January 17, 2007, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof except as set forth specifically herein or contemplated hereby. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. The failure of a party to exercise any right or remedy shall not be deemed or constitute a waiver of such right or remedy in the future. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

15. Counterparts. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

16. Pronouns. Whenever a pronoun of any gender or number is used herein, it shall, where appropriate, be deemed to include any other gender and number.

17. Time of Essence. Time shall be of the essence of this Agreement.

18. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

19. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to the choice of law or conflict of laws principles thereof.

If the foregoing is in accordance with your understanding, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Placement Agent.

CAPSTONE TURBINE CORPORATION

By: /s/ Walter J. McBride
Name: Walter J. McBride
Title: EVP/CFO

Accepted as of the date
first above written.

A.G. EDWARDS & SONS, INC.

By: /s/ Albert F. Bender, III
Name: Albert F. Bender, III
Title: Managing Director

SCHEDULE I

FREE WRITING PROSPECTUSES

Final Term Sheet dated January 18, 2007

SCHEDULE II

SUBSIDIARIES

Capstone Turbine International, Inc.

Exhibit A

Form of Company Counsel Legal Opinion

- (i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with corporate power and authority to own, lease and operate its properties and assets, and to conduct its business as described in the Disclosure Package and the Prospectus and to carry out and perform its obligations under the Transaction Documents.
- (ii) The Company is duly qualified as a foreign corporation for the transaction of business and is in good standing in the State of California.
- (iii) The Company has an authorized equity capitalization as set forth in the Disclosure Package and the Prospectus.
- (iv) The shares of Common Stock to be issued and sold by the Company pursuant to the Placement Agency Agreement and the Subscription Agreements have been duly authorized and reserved for issuance and, when issued and delivered in accordance with the provisions of the Placement Agency Agreement and the Subscription Agreements, will be duly and validly issued and fully paid and non-assessable, and will conform in all material respects to the description thereof contained in the Disclosure Package and the Prospectus.
- (v) The number of Warrant Shares issuable upon exercise of the Warrants based on the exercise price in effect on the date hereof have been duly authorized and reserved for issuance and, when issued and delivered upon exercise by a holder in accordance with the provisions of the Warrants, will be duly and validly issued and fully paid and non-assessable.
- (vi) There are no preemptive rights or similar rights to subscribe for or purchase, nor any restrictions upon the voting or transfer of, the shares of Common Stock or the Warrant Shares pursuant to the Certificate of Incorporation, Bylaws, DGCL or Reviewed Agreements.
- (vii) Each of the Placement Agreement and the Subscription Agreements has been duly authorized, executed and delivered by the Company, and each of the Placement Agreement and the Subscription Agreements is a valid and legally binding obligation of the Company, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and by general principles of equity.
- (viii) The Warrants being issued on the date hereof have been duly authorized by the Company and, when executed by the Company and issued and delivered against payment of the purchase price therefor specified in the Placement Agreement in accordance with the terms of the Placement Agreement and the Subscription Agreements, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws

relating to or affecting creditors' rights generally and by general principles of equity and will conform in all material respects to the description thereof contained in the Disclosure Package and the Prospectus.

(ix) The execution, delivery and performance by the Company of the Transaction Documents and the consummation of the transactions contemplated thereby, including the issuance and sale of the Securities being delivered on the date hereof, do not conflict with and do not result in a breach or violation by the Company of any of the terms or provisions of, or constitute a default under, any Reviewed Agreement ("Reviewed Agreement" means only a contract that is expressly identified on Exhibit A hereto), nor will such actions result in any violation by the Company of (i) the Certificate of Incorporation or the Bylaws, (ii) any U.S. federal or California state statute or the DGCL, or (iii) any rule or any order, judgment, decree or regulation known to us of any U.S. federal or California state court or governmental agency or body having jurisdiction over the Company or any of its properties.

(x) No consent, approval, authorization, order, registration or qualification of or with any U.S. federal or California or Delaware state court or governmental agency or body is required under California law or the DGCL for the execution, delivery and performance of the Transaction Documents and the issue and sale of the Securities on the date hereof or the consummation by the Company of the transactions contemplated by the Transaction Documents, except (i) such as may have been obtained or made under the Securities Act, (ii) such consents, approvals, authorizations, orders, registrations or qualifications as may be required under applicable state securities or Blue Sky laws in connection with the purchase and distribution of the Securities, and (iii) as may be expressly contemplated by the Transaction Documents.

(xi) The statements set forth in the Disclosure Package and the Prospectus under (1) the caption "Description of Common Stock" with respect to the issuance of Common Stock pursuant to the Placement Agreement and the Subscription Agreements and (2) the caption "Description of Warrants" with respect to the issuance of Warrants pursuant to the Purchase Agency Agreement and the Subscription Agreements, insofar as such statements purport to constitute summaries of the legal matters, documents or proceedings referred to therein, fairly summarize in all material respects the matters referred to therein.

(xii) To our knowledge, there are no legal or governmental proceedings pending against the Company required to be disclosed in the Disclosure Package or the Prospectus by the Securities Act or the Rules and Regulations, other than those described therein.

(xiii) As of immediately prior to the Closing Date, the Company is not required to register as an "investment company," as such term is defined in the Investment Company Act of 1940, as amended.

(xiv) The Registration Statement is effective under the Securities Act and the Prospectus was filed on January 19, 2007 pursuant to Rule 424(b) of the Rules and Regulations and, to our knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or threatened by the Commission.

Exhibit B

Form of Company Counsel Written Statement

We have participated in conferences with certain officers and other representatives of the Company, representatives of the Placement Agent, counsel for the Placement Agent and representatives of the independent certified public accountants of the Company, at which the contents of the Registration Statement, the Disclosure Package, the Prospectus and related matters were reviewed and discussed and, although we do not assume any responsibility for the accuracy, completeness or fairness of the Registration Statement, the Disclosure Package or the Prospectus, and we have made no independent check or verification thereof, on the basis of the foregoing no facts have come to our attention that have caused us to believe that:

(i) the Registration Statement, as of its most recent effective date, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein not misleading (it being understood that we are not called upon to and do not comment on the financial statements and the notes thereto and financial statement schedules and other financial information derived from financial or accounting records of the Company included therein or omitted therefrom),

(ii) the documents included in the Disclosure Package, all considered together, as of 5:00 P.M. EST on January 18, 2007 (the "Applicable Time"), contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading (it being understood that we are not called upon to and do not comment on the financial statements and the notes thereto and financial statement schedules and other financial information derived from financial or accounting records of the Company included therein or omitted therefrom), or

(iii) the Prospectus, as of its date or as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading (it being understood that we are not called upon to and do not comment on the financial statements and the notes thereto and financial statement schedules and other financial information derived from financial or accounting records of the Company included therein or omitted therefrom).

In addition, we confirm to you that the Registration Statement, when it became effective, and the Base Prospectus, as supplemented by the Final Prospectus Supplement, as of the date of the Final Prospectus Supplement (it being understood that we are not called upon to and do not comment on the financial statements and the notes thereto and financial statement schedules and other financial information derived from financial or

accounting records of the Company included therein or omitted therefrom), appeared on their face to comply as to form in all material respects with the requirements of the Securities Act and the applicable Rules and Regulations. For purposes of this paragraph, we have assumed that the statements made in the Registration Statement, the Prospectus and the Disclosure Package are correct and complete.

CAPSTONE TURBINE CORPORATION

WARRANT

Warrant No. ____

Original Issue Date: January 24, 2007

CAPSTONE TURBINE CORPORATION, a Delaware corporation (the "**Company**"), hereby certifies that, for value received, ____ or its permitted registered assigns (the "**Holder**"), is entitled to purchase from the Company up to a total of ____ shares of common stock, \$0.001 par value (the "**Common Stock**"), of the Company (each such share, a "**Warrant Share**" and all such shares, the "**Warrant Shares**") at an exercise price equal to \$1.30 per share (as adjusted from time to time as provided herein, the "**Exercise Price**"), at any time and from time to time on or after the date hereof (the "**Original Issue Date**") and through and including January 23, 2012 (the "**Expiration Date**"), and subject to the following terms and conditions:

This Warrant is being issued pursuant to that certain Subscription Agreement, dated January 18, 2007, by and between the Company and the Purchaser identified therein (the "**Purchase Agreement**"). The original issuance of the Warrant by the Company pursuant to the Purchase Agreement has been registered pursuant to a Registration Statement on Form S-3 (File No. 333-128164) (the "**Registration Statement**").

1. **Definitions.** In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement.

2. **List of Warrant Holders.** The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "**Warrant Register**"), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder from time to time). The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. **List of Transfers; Restrictions on Transfer.** The Company shall register any such transfer of all or any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein.

Upon any such registration or transfer, a new Warrant to purchase Common Stock, in substantially the form of this Warrant (any such new Warrant, a "**New Warrant**"), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations in respect of the New Warrant that the Holder has in respect of this Warrant.

4. Exercise and Duration of Warrant.

(a) All or any part of this Warrant shall be exercisable by the registered Holder in any manner permitted by Section 10 of this Warrant at any time and from time to time on or after the Original Issue Date and through and including the Expiration Date. Subject to Section 11 hereof, at 5:00 p.m., New York City time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding. In addition, if cashless exercise would be permitted under Section 10(b) of this Warrant, then all or part of this Warrant may be exercised by the registered Holder utilizing such cashless exercise provisions at any time, or from time to time, on or after the Original Issue Date and through and including the Expiration Date.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached hereto (the "**Exercise Notice**"), completed and duly signed, and (ii) if such Holder is not utilizing the cashless exercise provisions set forth in this Warrant, payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised. The date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is an "**Exercise Date.**" The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. Delivery of Warrant Shares.

(a) Upon exercise of this Warrant, the Company shall promptly (but in no event later than three Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate, a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends.

The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. The Company shall, upon the written request of the Holder, use its best efforts to deliver, or cause to be delivered, Warrant Shares hereunder electronically through the Depository Trust and Clearing Corporation or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through the Depository Trust and Clearing Corporation.

(b) If by the close of the third Trading Day after delivery of an Exercise Notice and the payment of the aggregate exercise price, the Company fails to deliver to the Holder a certificate representing the required number of Warrant Shares in the manner required pursuant to Section 5(a), and if after such third Trading Day and prior to the receipt of such Warrant Shares, the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "**Buy-In**"), then the Company shall, within three Trading Days after the Holder's request and in the Holder's sole discretion, either (i) pay in cash to the Holder an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such Warrant Shares) shall terminate or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Warrant Shares, times (B) the closing bid price on the date of the event giving rise to the Company's obligation to deliver such certificate.

(c) To the extent permitted by law, the Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance that might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Holder's right to pursue any

other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided, however,* that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or the Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares that are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of

shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to all holders of Common Stock for no consideration (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph), (iii) rights or warrants to subscribe for or purchase any security, or (iv) any other asset (in each case, "**Distributed Property**"), then, upon any exercise of this Warrant that occurs after the record date fixed for determination of stockholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Warrant Shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Warrant Shares had the Holder been the record holder of such Warrant Shares immediately prior to such record date.

(c) Fundamental Transactions. If, at any time while this Warrant is outstanding (i) the Company effects any merger or consolidation of the Company with or into another Person, in which the shareholders of the Company immediately prior to the transaction own less than a majority of the outstanding stock of the surviving entity, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer approved or authorized by our Board of Directors is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (each, a "**Fundamental Transaction**"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the "**Alternate Consideration**"). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to purchase, and the other obligations under this Warrant. The provisions of this paragraph (c) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction.

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 9, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Subsequent Equity Sales.

(i) Except as provided in subsection (e)(iii) hereof, if and whenever the Company shall issue or sell, or is, in accordance with any of subsections (e)(ii)(1) through (e)(ii)(4) hereof, deemed to have issued or sold, any shares of Common Stock for no consideration or for a consideration per share less than the Exercise Price in effect immediately prior to the time of such issue or sale, then and in each such case (a "**Trigger Issuance**") the then-existing Exercise Price shall be reduced, as of the close of business on the effective date of the Trigger Issuance, to a price determined as follows:

$$\text{Adjusted Exercise Price} = \frac{(A \times B) + D}{A+C}$$

where

"A" equals the number of shares of Common Stock outstanding, including Additional Shares of Common Stock (as defined below) deemed to be issued hereunder, immediately preceding such Trigger Issuance;

"B" equals the Exercise Price in effect immediately preceding such Trigger Issuance;

"C" equals the number of Additional Shares of Common Stock issued or deemed issued hereunder as a result of the Trigger Issuance; and

"D" equals the aggregate consideration, if any, received or deemed to be received by the Company upon such Trigger Issuance; *provided, however*, that in no event shall the Exercise Price after giving effect to such Trigger Issuance be greater than the Exercise Price immediately prior to such Trigger Issuance.

For purposes of this subsection (e), "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this subsection (e), other than Excluded Issuances (as defined in subsection (e)(iii) hereof).

(ii) For purposes of this subsection 9(e), the following subsections (e)(ii)(1) to (e)(ii)(4) shall also be applicable:

(1) Issuance of Rights or Options. In case at any time the Company shall in any manner grant (directly and not by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities"), whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the sum (which sum shall constitute the applicable consideration) of (x) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus (y) the aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus (z), in the case of such Options that relate to Convertible Securities, the aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Exercise Price in effect immediately prior to the time of the granting of such Options, then the total number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding for purposes of adjusting the Exercise Price. Except as otherwise provided in subsection 9(e)(ii)(3), no adjustment of the Exercise Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(2) Issuance of Convertible Securities. In case the Company shall in any manner issue (directly and not by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the sum (which sum shall constitute the applicable consideration) of (x) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus (y) the aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (ii) the total number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Exercise Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding for purposes of adjusting the Exercise Price, provided that

(a) except as otherwise provided in subsection 9(e)(ii)(3), no adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities and (b) no further adjustment of the Exercise Price shall be made by reason of the issue or sale of Convertible Securities upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Exercise Price have been made pursuant to the other provisions of subsection 9(e).

(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in subsection 9(e)(ii)(1) hereof, the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subsections 9(e)(ii)(1) or 9(e)(ii)(2), or the rate at which Convertible Securities referred to in subsections 9(e)(ii)(1) or 9(e)(ii)(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Exercise Price in effect at the time of such event shall forthwith be readjusted to the Exercise Price that would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold. On the termination of any Option for which any adjustment was made pursuant to this subsection 9(e) or any right to convert or exchange Convertible Securities for which any adjustment was made pursuant to this subsection 9(e) (including without limitation upon the redemption or purchase for consideration of such Convertible Securities by the Company), the Exercise Price then in effect hereunder shall forthwith be changed to the Exercise Price that would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(4) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the gross amount received by the Company therefor. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Company. In case any Options shall be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Company. If Common Stock, Options or Convertible Securities shall be issued or sold by the Company and, in connection therewith, other Options or Convertible Securities (the "**Additional Rights**") are issued, then the consideration received or deemed to be received by the Company shall be reduced by the fair market value of the Additional Rights (as determined using the Black-Scholes option pricing model or another method mutually agreed to by the Company and the Holder). The Board of Directors of the Company shall respond promptly, in writing, to an inquiry by the Holders as to the fair market value of the Additional Rights. In the event that the

Board of Directors of the Company and the Holder are unable to agree upon the fair market value of the Additional Rights, the Company and the Holder shall jointly select an appraiser, who is experienced in such matters. The decision of such appraiser shall be final and conclusive, and the cost of such appraiser shall be borne evenly by the Company and the Holder.

(iii) Notwithstanding the foregoing, no adjustment will be made under this paragraph (e) in respect of: (i) the issuance of securities upon the exercise or conversion of any Common Stock or Common Stock Equivalents issued by the Company prior to the date hereof, (ii) the grant of options, warrants, Common Stock or other Common Stock Equivalents (but not including any amendments to such instruments) under any duly authorized Company stock option, restricted stock plan or stock purchase plan, whether now existing or hereafter approved by the Company and its stockholders, and the issuance of Common Stock in respect thereof, (iii) the issuance of securities in connection with a Strategic Transaction, (iv) the issuance of securities to vendors, or (v) the issuance of securities in a transaction described in Section 9(a) or 9(b). For purposes of this paragraph, a “**Strategic Transaction**” means a transaction or relationship in which (1) the Company issues shares of Common Stock to a Person that the Board of Directors of the Company determined in good faith is, itself or through its Subsidiaries, an operating company in a business synergistic with the business of the Company (or a shareholder thereof) and (2) the Company expects to receive benefits in addition to the investment of funds, but shall not include (x) a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to a Person whose primary business is investing in securities or (y) issuances to lenders.

(iv) Upon any adjustment to the Exercise Price pursuant to Section 9(e)(i) above, the number of Warrant Shares purchasable hereunder shall be adjusted by multiplying such number by a fraction, the numerator of which shall be the Exercise Price in effect immediately prior to such adjustment and the denominator of which shall be the Exercise Price in effect immediately thereafter. This provision shall not restrict the number of shares of Common Stock that a Holder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a transaction contemplated by Section 9 of this Warrant. Notwithstanding any other provisions in this Section 9 to the contrary, if a reduction in the Exercise Price pursuant to Section 9(e)(i) would require the Company to obtain stockholder approval of the transactions contemplated by the Purchase Agreement pursuant to Nasdaq Marketplace Rule 4350(i) and such stockholder approval has not been obtained, (i) the Exercise Price shall be reduced to the maximum extent that would not require stockholder approval under such Rule, and (ii) the Company shall use its commercially reasonable efforts to obtain such stockholder approval as soon as reasonably practicable, including by calling a special meeting of stockholders to vote on such Exercise Price adjustment.

(f) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by

or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(g) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will, at the written request of the Holder, promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's Transfer Agent.

(h) Notice of Corporate Events. If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any Subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction at least 10 Trading Days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all reasonable steps to give Holder the practical opportunity to exercise this Warrant prior to such time; *provided, however*, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

10. Payment of Exercise Price. The Holder may pay the Exercise Price in one of the following manners:

(a) Cash Exercise. The Holder may deliver immediately available funds; or

(b) Cashless Exercise. If an Exercise Notice is delivered at a time when the Registration Statement is not then effective, then the Holder shall notify the Company in an Exercise Notice of its election to utilize cashless exercise, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the Closing Price on the Trading Day immediately prior to the Exercise Date.

B = the Exercise Price.

11. Limitations on Exercise. Notwithstanding anything to the contrary contained herein, the number of Warrant Shares that may be acquired by the Holder upon any exercise of this Warrant (or otherwise in respect hereof) shall be limited to the extent necessary to insure that, following such exercise (or other issuance), the total number of shares of Common Stock then beneficially owned by such Holder and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act, does not exceed 9.999% (the "**Maximum Percentage**") of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such exercise). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. Each delivery of an Exercise Notice hereunder will constitute a representation by the Holder that it has evaluated the limitation set forth in this Section and determined that issuance of the full number of Warrant Shares requested in such Exercise Notice is permitted under this Section. The Company's obligation to issue shares of Common Stock in excess of the limitation referred to in this Section shall be suspended (and, except as provided below, shall not terminate or expire notwithstanding any contrary provisions hereof) until such time, if any, as such shares of Common Stock may be issued in compliance with such limitation; provided, that, if, as of 5:00 p.m., New York City time, on the Expiration Date, the Company has not received written notice that the shares of Common Stock may be issued in compliance with such limitation, the Company's obligation to issue such shares shall terminate. This provision shall not restrict the number of shares of Common Stock that a Holder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Transaction as contemplated in Section 9 of this Warrant. This restriction may not be waived.

12. No Fractional Shares. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares that would

otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the closing price of one Warrant Share as reported by the applicable Trading Market on the Exercise Date.

13. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section at or prior to 5:00 p.m. (New York City time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Trading Day or later than 5:00 p.m. (New York City time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such notices or communications shall be: if to the Company, to Capstone Turbine Corporation, 21211 Nordhoff Street, Chatsworth, California 91311, Attention: Chief Financial Officer, facsimile number (818) 734-5321 (or such other address as the Company shall indicate in writing in accordance with this Section) or (ii) if to the Holder, to the address or facsimile number appearing on the Warrant Register (or such other address as the Company shall indicate in writing in accordance with this Section).

14. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon 30 days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. Miscellaneous.

(a) This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(b) All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of this Warrant and the

transactions herein contemplated (“**Proceedings**”) (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Warrant or the transactions contemplated hereby. If either party shall commence a Proceeding to enforce any provisions of this Warrant, then the prevailing party in such Proceeding shall be reimbursed by the other party for its attorney’s fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Proceeding.

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

(d) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefore, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(e) Prior to exercise of this Warrant, the Holder hereof shall not, by reason of by being a Holder, be entitled to any rights of a stockholder with respect to the Warrant Shares.

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

CAPSTONE TURBINE CORPORATION

By: _____
Name:
Title:

EXERCISE NOTICE

CAPSTONE TURBINE CORPORATION

WARRANT NO. ____ DATED JANUARY 24, 2007

Ladies and Gentlemen:

(1) The undersigned hereby elects to exercise the above-referenced Warrant with respect to ____ shares of Common Stock. Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Warrant.

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

Cash Exercise under Section 10(a)

Cashless Exercise under Section 10(b)

(3) If the Holder has elected a Cash Exercise, the holder shall pay the sum of \$____ to the Company in accordance with the terms of the Warrant.

(4) Pursuant to this Exercise Notice, the Company shall deliver to the Holder the number of Warrant Shares determined in accordance with the terms of the Warrant.

(5) By its delivery of this Exercise Notice, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will not beneficially own in excess of the number of shares of Common Stock (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934) permitted to be owned under Section 11 of this Warrant to which this notice relates.

HOLDER:

(Print name)

By: _____

Title: _____

WARRANT ORIGINALLY ISSUED JANUARY 24, 2007
WARRANT NO. _____

FORM OF ASSIGNMENT

To be completed and signed only upon transfer of Warrant

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the right represented by the within Warrant to purchase _____ shares of Common Stock to which the within Warrant relates and appoints _____ attorney to transfer said right on the books of the Company with full power of substitution in the premises.

Dated: _____

TRANSFEROR:

(Print Name)

By: _____

Title: _____

TRANSFeree:

(Print Name)

(Address of Transferee)

In the presence of:

Waller Lansden Dortch & Davis, LLP

Nashville City Center
511 Union Street, Suite 2700
Nashville, Tennessee 37219-8966
(615) 244-6380
Fax: (615) 244-6804
www.wallerlaw.com

1901 Sixth Avenue North, Suite 1400
Birmingham, Alabama 35203-2623
(205) 214-6380
520 South Grand Avenue, Suite 800
Los Angeles, California 90071
(213) 362-3680

January 18, 2007

Capstone Turbine Corporation
21211 Nordhoff Street
Chatsworth, CA 91311

Re: Registration Statement on Form S-3 (No. 333-128164)

Ladies and Gentlemen:

We have acted as counsel to Capstone Turbine Corporation, a Delaware corporation (the "Company"), in connection with the offering and sale by the Company of 40,000,000 shares of its common stock, par value \$0.001 per share (the "Common Stock") and warrants to purchase 20,000,000 shares of Common Stock (the "Warrant Shares") (such warrants, together with the Common Stock, the "Securities") pursuant to a Registration Statement on Form S-3 (Registration Number 333-128164) (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), and a related prospectus, dated as of September 14, 2005 (the "Prospectus"), and a prospectus supplement, dated as of January 18, 2007 (the "Prospectus Supplement"). The Securities are to be issued pursuant to Subscription Agreements relating to a registered direct offering pursuant to which the Company will sell 40,000,000 shares of Common Stock and warrants to purchase 20,000,000 shares of Common Stock to certain investors.

In connection with this opinion, we have examined and relied upon such records, documents and other instruments as in our judgment are necessary and appropriate in order to express the opinions hereinafter set forth and have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as certified or photostatic copies.

Based upon the foregoing, we are of the opinion that the Securities, when issued and delivered in the manner and on the terms described in the Subscription Agreements, will be validly issued, fully paid and non-assessable. The Warrant Shares have been duly authorized and when issued pursuant to the warrant will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion with the Securities and Exchange Commission as Exhibit 5.3 to the Registration Statement. We also consent to the reference to this firm under the caption "Legal Matters" in the Prospectus and the Prospectus Supplement. This consent is not to be construed as an admission that we are a party whose consent is required to be filed with the Registration Statement under the provisions of the Securities Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Waller Lansden Dortch & Davis, LLP

Subscription Terms

Capstone Turbine Corporation
21211 Nordhoff Street
Chatsworth, California 91311

Ladies and Gentlemen:

The undersigned (the “*Investor*”) hereby confirms and agrees with you as follows:

1. The subscription terms set forth herein (the “*Subscription*”) are made as of the date set forth below between Capstone Turbine Corporation, a Delaware corporation (the “*Company*”), and the Investor.
 2. As of the Closing (as defined below) and subject to the terms and conditions hereof, the Company and the Investor agree that the Investor will purchase from the Company and the Company will issue and sell to the Investor (i) such number of shares (the “*Shares*”) of common stock, par value \$0.001 per share, of the Company (the “*Common Stock*”), and (ii) such number of Warrants to purchase Common Stock (the “*Warrants*” in the form attached hereto as Exhibit B, and together with the Shares, the “*Securities*”) as is set forth on the signature page hereto (the “*Signature Page*”) for a purchase price of \$1.14 per unit. The Investor acknowledges that the offering is not a firm commitment underwriting and that there is no minimum offering amount.
 3. The completion of the purchase and sale of the Securities shall occur at a closing (the “*Closing*”) that, in accordance with Rule 15c6-1 promulgated under the Securities Exchange Act of 1934, as amended, is expected to occur on or about January 24, 2007. At the Closing, (a) the Company shall cause its transfer agent to release to the Investor the number of Securities being purchased by the Investor and (b) the aggregate purchase price for the Securities being purchased by the Investor will be delivered by or on behalf of the Investor to the Company. The Investor shall settle the Shares via Deposit/Withdrawal At Custodian (“*DWAC*”) and the provisions set forth in Exhibit A hereto shall be incorporated herein by reference as if set forth fully herein.
 4. The offering and sale of the Securities are being made pursuant to the Registration Statement and the Prospectus (as such terms are defined below). The Investor acknowledges that the Company intends to enter into subscriptions in substantially the same form as this Subscription with certain other investors and intends to offer and sell (the “*Offering*”) up to an aggregate of 40,000,000 shares of Common Stock and Warrants to purchase 20,000,000 shares of Common Stock pursuant to the Registration Statement and Prospectus. The Investor acknowledges and agrees that there is no minimum offering amount.
 5. The Company has filed with the Securities and Exchange Commission (the “*Commission*”) a prospectus (the “*Base Prospectus*”) and will promptly file a final prospectus supplement (collectively, the “*Prospectus*”) with respect to the registration statement (File No. 333-128164) reflecting the Offering, including all amendments thereto, the exhibits and any schedules thereto, the documents otherwise deemed to be a part thereof or included therein by the rules and regulations of the Commission (the “*Rules and Regulations*”) and any registration statement relating to the Offering and filed pursuant to Rule 462(b) under the Rules and Regulations (collectively, the “*Registration Statement*”), in conformity with the Securities Act of 1933, as amended (the “*Securities Act*”), including Rule 424(b) thereunder. The Investor hereby confirms that it has had full access to the Base Prospectus and the Company’s periodic reports and other information incorporated by reference therein, and was able to read, review, download and print such materials.
-

6. The Company has entered into a Placement Agency Agreement (the "*Placement Agreement*"), dated January 18, 2007 with A.G. Edwards & Sons, Inc. (the "*Placement Agent*"), which will act as the Company's placement agent with respect to the Offering and receive a fee in connection with the sale of the Securities. The Placement Agreement contains certain representations and warranties of the Company. The Company acknowledges and agrees that the Investor may rely on the representations and warranties made by it to the Placement Agent in Section 3 of the Placement Agreement, to the same extent as if such representations and warranties had been incorporated in full herein and made directly to the Investor. Capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed to such terms in the Placement Agreement.

7. The obligations of the Company and the Investor to complete the transactions contemplated by this Subscription shall be subject to the following:

a. The Company's obligation to issue and sell the Securities to the Investor shall be subject to: (i) the receipt by the Company of the purchase price for the Securities being purchased hereunder as set forth on the Signature Page and (ii) the accuracy of the representations and warranties made by the Investor and the fulfillment of those undertakings of the Investor to be fulfilled prior to the Closing Date.

b. The Investor's obligation to purchase the Securities will be subject to the condition that the Placement Agent shall not have: (i) terminated the Placement Agreement pursuant to the terms thereof or (ii) determined that the conditions to closing in the Placement Agreement have not been satisfied.

8. The Company hereby makes the following representations, warranties and covenants to the Investor:

a. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Subscription and otherwise to carry out its obligations hereunder. The execution and delivery of this Subscription by the Company and the consummation by it of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Company. This Subscription has been duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

b. The Company shall (i) before the opening of trading on The Nasdaq Global Market on the next trading day after the date hereof, issue one or more press releases disclosing all material aspects of the transactions contemplated hereby and any preliminary financial information for the third quarter ended December 31, 2006 contained in the Prospectus and (ii) make such other filings and notices in the manner and time required by the Commission with respect to the transactions contemplated hereby. Upon the issuance of one or more press releases described in the immediately preceding sentence, the Investor will not be in receipt of any material, non-public information provided to it by the Company, its officers or directors. The Company shall not identify the Investor by name in any press release or public filing, or otherwise publicly disclose the Investor's name, without the Investor's prior written consent, unless required by law or the rules and regulations of any self-regulatory organization which the Company or its securities are subject.

9. The Investor hereby makes the following representations, warranties and covenants to the Company:

a. The Investor represents that (i) it has had full access to the Base Prospectus, the Prospectus Supplement and the Company's periodic reports and other information incorporated by reference therein, prior to or in connection with its receipt of this Subscription, (ii) it is knowledgeable,

sophisticated and experienced in making, and is qualified to make, decisions with respect to investments in securities representing an investment decision like that involved in the purchase of the Securities, and (iii) it does not have any agreement or understanding, directly or indirectly, with any person or entity to distribute any of the Securities.

b. The Investor has the requisite power and authority to enter into this Subscription and to consummate the transactions contemplated hereby. The execution and delivery of this Subscription by the Investor and the consummation by it of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Investor. This Subscription has been executed by the Investor and, when delivered in accordance with the terms hereof, will constitute a valid and binding obligation of the Investor enforceable against the Investor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

c. The Investor understands that nothing in this Subscription or any other materials presented to the Investor in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of Securities.

d. Neither the Investor nor any Person acting on behalf of, or pursuant to any understanding with or based upon any information received from, the Investor has, directly or indirectly, engaged in any transactions in the securities of the Company (including, without limitation, any Short Sales involving the Company's securities) since the earlier to occur of (i) the time that the Investor was first contacted by the Placement Agent or the Company with respect to the transactions contemplated hereby and (ii) the date that is the tenth (10th) trading day prior to the date of this Subscription. "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), whether or not against the box, and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, "put equivalent positions" (as defined in Rule 16a-1(h) under the Exchange Act) and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker dealers or foreign regulated brokers. The Investor covenants that neither it, nor any Person acting on behalf of, or pursuant to any understanding with or based upon any information received from, the Investor will engage in any transactions in the securities of the Company (including Short Sales) prior to the time that the transactions contemplated by this Subscription are publicly disclosed.

e. The Investor represents that, except as set forth below, (i) it has had no position, office or other material relationship within the past three years with the Company or persons known to it to be affiliates of the Company, (ii) it is not a, and it has no direct or indirect affiliation or association with any, NASD member or an Associated Person (as such term is defined under the NASD Membership and Registration Rules Section 1011) as of the date hereof, and (iii) neither it nor any group of investors (as identified in a public filing made with the Commission) of which it is a member, acquired, or obtained the right to acquire, 20% or more of the Common Stock (or securities convertible or exercisable for Common Stock) or the voting power of the Company on a post-transaction basis. Exceptions:

(If no exceptions, write "none." If left blank, response will be deemed to be "none.")

10. Notwithstanding anything to the contrary contained herein, the number of Warrant Shares that may be acquired by the Investor upon exercise of the Warrant shall be limited to the extent necessary to insure

that, following such exercise (or other issuance), the total number of shares of Common Stock then beneficially owned by such Investor and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with the Investor's for purposes of Section 13(d) of the Exchange Act, does not exceed 9.999% of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such exercise). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

- 11.** Notwithstanding any investigation made by any party to this Subscription, all covenants, agreements, representations and warranties made by the Company and the Investor herein will survive the execution of this Subscription, the delivery to the Investor of the Securities being purchased and the payment therefor.
- 12.** This Subscription may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Investor.
- 13.** In case any provision contained in this Subscription should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.
- 14.** This Subscription will be governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to the principles of conflicts of law that would require the application of the laws of any other jurisdiction.
- 15.** This Subscription may be executed in one or more counterparts, each of which will constitute an original, but all of which, when taken together, will constitute but one instrument, and will become effective when one or more counterparts have been signed by each party hereto and delivered to the other parties.
- 16.** The Investor acknowledges and agrees that such Investor's receipt of the Company's counterpart to this Subscription shall constitute written confirmation of the Company's sale of Securities to such Investor.
- 17.** In the event that the Placement Agreement is terminated by the Placement Agent pursuant to the terms thereof, this Subscription shall terminate without any further action on the part of the parties hereto.

INVESTOR SIGNATURE PAGE

Number of Shares: _____

Number of Warrants: _____

(such number to be equal to 50% of the number of Shares being purchased by the Investor)

Purchase Price Per Security: \$1.14

Aggregate Purchase Price: \$ _____

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

Dated as of: January 18, 2007

INVESTOR

By: _____

Print Name: _____

Title: _____

Name that Securities are to be registered: _____

Mailing Address: _____

Taxpayer Identification Number: _____

Manner of Settlement of the Shares: DWAC (see Exhibit A for explanation and instructions)

Agreed and Accepted this 18th day of January 2007:

CAPSTONE TURBINE CORPORATION

By: _____

Title: _____

Sales of the Securities purchased hereunder were made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Rule 172 promulgated under the Securities Act.

EXHIBIT A

TO BE COMPLETED BY INVESTOR

SETTLING VIA DWAC

Delivery by electronic book-entry at The Depository Trust Company (“DTC”), registered in the Investor’s name and address as set forth on the Signature Page of the Subscription to which this Exhibit A is attached, and released by Mellon Investor Services LLC, the Company’s transfer agent (the “Transfer Agent”), to the Investor at the Closing.

Name of DTC Participant (broker-dealer at which the account or accounts to be credited with the Shares are maintained)

DTC Participant Number

Name of Account at DTC Participant being credited with the Shares

Account Number at DTC Participant being credited with the Shares

NO LATER THAN ONE (1) BUSINESS DAY AFTER THE EXECUTION OF THE SUBSCRIPTION TO WHICH THIS EXHIBIT A IS ATTACHED BY THE INVESTOR AND THE COMPANY, THE INVESTOR SHALL:

- (I) DIRECT THE BROKER-DEALER AT WHICH THE ACCOUNT OR ACCOUNTS TO BE CREDITED WITH THE SHARES ARE MAINTAINED TO SET UP A DEPOSIT/WITHDRAWAL AT CUSTODIAN (“DWAC”) INSTRUCTING THE TRANSFER AGENT TO CREDIT SUCH ACCOUNT OR ACCOUNTS WITH THE SHARES, AND**
- (II) REMIT BY WIRE TRANSFER THE AMOUNT OF FUNDS EQUAL TO THE AGGREGATE PURCHASE PRICE FOR THE SECURITIES BEING PURCHASED BY THE INVESTOR TO THE FOLLOWING ACCOUNT:**

PNC Bank New Jersey
ABA#: 031207607
Account Name: Lowenstein Sandler Attorney Trust Special A/C IV
Account #: 8025720131

Such funds shall be held in a non-interest bearing escrow pursuant to an escrow agreement entered into between Lowenstein Sandler PC (the “Escrow Agent”), the Placement Agent and the Company (the “Escrow Agreement”) until the Closing and delivered by the Escrow Agent on behalf of the Investor to the Company upon the satisfaction, in the sole judgment of the Placement Agent, of the conditions set forth in Section 7(b) of the Subscription to which this Exhibit A is attached. The Company and the Investor agree to indemnify and hold the Escrow Agent harmless from and against any and all losses, costs, damages, expenses and claims (including, without limitation, court costs and reasonable attorneys fees)

("*Losses*") with respect to the funds held in escrow pursuant hereto or arising under the Escrow Agreement, unless it is finally determined that such Losses resulted directly from the willful misconduct or gross negligence of the Escrow Agent. Anything in this paragraph to the contrary notwithstanding, in no event shall the Escrow Agent be liable for any special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

Investor acknowledges that the Escrow Agent acts as counsel to the Placement Agent, and shall have the right to continue to represent the Placement Agent, in any action, proceeding, claim, litigation, dispute, arbitration or negotiation in connection with the Offering, and Investor hereby consents thereto and waives any objection to the continued representation of the Placement Agent by the Escrow Agent in connection therewith based upon the services of the Escrow Agent under the Escrow Agreement, without waiving any duty or obligation the Escrow Agent may have to any other person.

EXHIBIT B

FORM OF WARRANT

FOR IMMEDIATE RELEASE**Capstone Turbine Announces Equity Offering**

CHATSWORTH, Calif.—(BUSINESS WIRE) — Jan 19, 2007 — Capstone Turbine Corporation, (www.microturbine.com; Nasdaq: CPST), today announced an offering pursuant to its shelf registration of common stock and warrants at an offering price of \$1.14 per unit in which it will issue 40,000,000 shares of common stock and warrants to purchase 20,000,000 shares of common stock. The five-year warrants will be immediately exercisable at an exercise price of \$1.30 per share. The financing is expected to close on or about January 24, 2007, subject to the satisfaction of customary closing conditions.

The Company intends to use the net proceeds from the transaction for general corporate purposes, which may include, but are not limited to, working capital and capital expenditures. The net proceeds to the Company from the offering are expected to be approximately \$42.5 million.

A.G. Edwards acted as placement agent for the offering and First Albany Capital acted as financial advisor.

A registration statement relating to these securities was filed with and has been declared effective by the Securities and Exchange Commission. This press release shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful. Any offer will be made only by means of a prospectus, including a prospectus supplement, forming a part of the effective registration statement. Copies of the final prospectus supplement together with the accompanying prospectus can be obtained at the SEC's website at <http://www.sec.gov> or from A.G. Edwards & Sons, Inc. at One North Jefferson, Saint Louis, Missouri 63116, (314) 955-3000.

About Capstone Turbine

Capstone Turbine Corporation (www.microturbine.com; Nasdaq: CPST) is the world's leading producer of low-emission microturbine systems, and was the first to market commercially viable microturbine energy products. Capstone Turbine has shipped thousands of Capstone MicroTurbine™ systems to customers worldwide. These award-winning systems have logged millions of documented runtime operating hours. Capstone Turbine is a member of the U.S. Environmental Protection Agency's Combined Heat and Power Partnership, which is committed to improving the efficiency of the nation's energy infrastructure and reducing emissions of pollutants and greenhouse gases. A UL-Certified ISO 9001:2000 certified company; Capstone Turbine is headquartered in the Los Angeles area with sales and/or service centers in New York, Mexico City, Milan, Nottingham, Shanghai and Tokyo.

“Capstone Turbine Corporation” and “Capstone MicroTurbine” are registered trademarks of Capstone Turbine Corporation. All other trademarks mentioned are the property of their respective owners.

This press release contains “forward-looking statements,” as that term is used in the federal securities laws, with regard to consummation of the financing and the anticipated use of proceeds. Forward-looking statements may be identified by words such as “expects,” “objective,” “intend,” “targeted,” “plan” and similar phrases. These forward-looking statements are subject to numerous assumptions, risks and uncertainties. Actual results could vary significantly based on a variety of factors, including factors described in Capstone’s recent filings with the Securities and Exchange Commission. Capstone cautions readers not to place undue reliance on these forward-looking statements, which speak only as of the date of this release. Capstone undertakes no obligation, and specifically disclaims any obligation, to release any revisions to any forward-looking statements to reflect events or circumstances after the date of this release or to reflect the occurrence of unanticipated events.

Source: Capstone Turbine Corporation
Contact: Capstone Turbine Corporation
Alice Barsoomian, 818-407-3628

FOR IMMEDIATE RELEASE**Capstone Turbine Announces Preliminary Third Quarter Fiscal 2007 Operating Results**

CHATSWORTH, Calif.—(BUSINESS WIRE) — Jan 19, 2007 — Capstone Turbine Corporation, (www.microturbine.com; Nasdaq: CPST), today reported that it expects its fiscal third quarter 2007 revenue to exceed analysts' consensus. The company said it expects revenue for the quarter of approximately \$5.7 million, exceeding analysts' consensus estimate of \$3.6 million. This estimate reflects an increase of approximately 97% over the revenue recorded for the previous quarter ended September 30, 2006 of \$2.9 million.

The company also expects its cash and cash equivalents balance to decrease by approximately \$13.9 million to \$25.5 million as of December 31, 2006, from the \$39.4 million balance at September 30, 2006. The decrease in cash and cash equivalents reflects the timing of cash receipts on the increased revenue for the quarter and payments of the company's short-term liabilities. However, upon successful closing of the equity offering also announced today, the company expects a cash and cash equivalents balance of approximately \$68.0 million.

In addition, the company expects its backlog to improve to \$8.1 million, or an increase of 19%, from the \$6.8 million as of September 30, 2006.

"We are pleased to report that our third quarter revenue of approximately \$5.7 will substantially exceed analysts' expectations and almost double the \$2.9 million in revenue reported for the second quarter," said Darren Jamison, President and CEO of Capstone Turbine Corporation. "The third-quarter revenue reflects significant increases in product sales in the North American, European and Russian markets," added Jamison.

The information set forth above is estimated and is subject to change. The company is currently finalizing its financial statements for the third quarter ended December 31, 2006. Complete results for that quarter will be announced at the close of the market on Friday, February 9, 2007. The company also will hold a live conference call and webcast to discuss its financial results. Any investor or interested individual can listen to the webcast, which is scheduled to begin at 1:45 p.m. PST (4:45 p.m. EST) on February 9, 2007, by logging on the company's investor relations webpage at www.microturbine.com. A replay of the webcast will be available on the site for 90 days.

About Capstone Turbine

Capstone Turbine Corporation (www.microturbine.com; Nasdaq: CPST) is the world's leading producer of low-emission microturbine systems, and was the first to market commercially viable microturbine energy products. Capstone Turbine has shipped thousands of Capstone MicroTurbine™ systems to customers worldwide. These award-winning systems have logged millions of documented runtime operating hours. Capstone Turbine is a member of the U.S. Environmental Protection Agency's Combined Heat and Power Partnership, which is committed to improving the efficiency of the nation's energy infrastructure and reducing emissions of pollutants and greenhouse gases. A UL-Certified ISO 9001:2000 certified company; Capstone Turbine is headquartered in the Los Angeles area with sales and/or service centers in New York, Mexico City, Milan, Nottingham, Shanghai and Tokyo.

"Capstone Turbine Corporation" and "Capstone MicroTurbine" are registered trademarks of Capstone Turbine Corporation. All other trademarks mentioned are the property of their respective owners.

This press release contains "forward-looking statements," as that term is used in the federal securities laws, with regard to its financial results for the third quarter ended December 31, 2006. Forward-looking statements may be identified by words such as "expects," "objective," "intend," "targeted," "plan" and similar phrases. These forward-looking statements are subject to numerous assumptions, risks and uncertainties. Actual results could vary significantly based on a variety of factors, including factors described in Capstone's filings with the Securities and Exchange Commission, which may cause Capstone's actual results to be materially different from any future results expressed or implied in such statements. Capstone cautions readers not to place undue reliance on these forward-looking statements, which speak only as of the date of this release. Capstone undertakes no obligation, and specifically disclaims any obligation, to release any revisions to any forward-looking statements to reflect events or circumstances after the date of this release or to reflect the occurrence of unanticipated events.

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